What We Owe to Our Children

by

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ABSTRACT

In their criticism of various approaches to upbringing and related American family law jurisprudence, liberal theorists tend to underweight the interests of parents in directing the development of children's values. Considered through the lens of T.M. Scanlon's contractualism, providing a good upbringing is not a matter of identifying children's "best interests" or acting in accordance with overriding end-state principles. Rather, children should be raised in accordance with principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement. The process of ascertaining such principles requires an understanding of relevant values; a good upbringing is what children receive when parents properly value their children, enabling them to appropriately recognize what it is that they have reason to do given the roles that they play. By developing the account of upbringing hinted at in Scanlon's contractualist monograph, *What We Owe to Each Other*, this project identifies and responds to some common mistakes in contemporary liberal theorizing on childhood, suggests that contractualism yields a more plausible account of upbringing than alternative approaches, and along the way identifies some implications of contractualism for public policy where individuals properly value the children of others in their community.

To my remarkable children—

Audrey Odette,

Brennan Duane Douglas,

Gideon Kevin Kenneth,

Gwendolyn Delora

—who inspired the question, and were owed my answer;

and my loving wife,

Aprilynne,

who made the children remarkable,

and made the question meaningful,

and made the answer possible.

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PREFACE

How should children be raised? The question—call it the "upbringing question"—seems important. Also pressing, to anyone who finds themselves actually raising children, and interesting, to those who care to evaluatively reflect on such things, but also *important* in a more general sense. While moral and political philosophers do not always trouble themselves with practical considerations, either as "input" from which to derive theory or as "output" in the form of practical advice, those who do have a long history of finding their projects thwarted, to various degrees, by common parental intuitions and practices. Small wonder, then, that political utopias (like those presented by, say, Plato or Marx) tend to prescribe substantial government intervention in childrearing. But even theorists with more modest aims encounter challenges from ordinary approaches to upbringing—in particular, the raising of children within families. Perhaps most famously, John Rawls, who identifies actual families as exemplars of certain liberal ideals,[1] also believes that his influential account of fair equality of opportunity "can be only imperfectly carried out, at least as long as the institution of the family exists."[2]

While this is not strictly an assertion that fair equality of opportunity *can* be achieved by destroying the institution of the family, the words "at least" are reminiscent

[1] John Rawls, *A Theory of Justice*, 105. Given this assertion it seems implausible to me that Rawls himself actually thought the institution of the family should be done away with—but unfortunately the tension between it and other claims he makes concerning the family is not something he ever specifically addressed in his own work.

[2] Ibid., 74. Relatedly, in *Anarchy, State, and Utopia*, 167, Robert Nozick notes also the "ambivalent position of radicals toward the family," observing that the family's "loving relationships are seen as a model to be emulated and extended across the whole society, at the same time that [the family] is denounced as a suffocating institution to be broken and condemned as a focus of parochial concerns that interfere with achieving radical goals."

of Henry II's complaint against the turbulent Archbishop Thomas Becket, taken by courtiers as an implicit request to carry out the clergyman's execution. The analogy is strengthened by the number of theorists occasionally styled "Rawlsian" who have set themselves against the institution of the family as commonly understood—though some, at least, are quick to aver no such hostility. Harry Brighouse and Adam Swift, for example, purport to *defend* "family values."[3] Nevertheless, their account of family life at least weakly condemns several traditional exercises of parental responsibility and discretion. Other philosophers of childhood, notably including David Archard and Matthew Clayton, follow similar arguments to similar conclusions. It is perhaps understandable for theorists to conclude, when they discover that the way children are ordinarily raised undermines the plausibility or implementation of their preferred political theories, that it must be impermissible to raise children that way. But one philosopher's modus ponens is ever another's modus tollens; assertions that people act impermissibly when they e.g. send a child to private school can, instead, give the impression that one's theory is absurd. This is perhaps no great concern if all one cares about is theory-crafting, but it is failure if one's goal is to actually guide behavior and implement policy for the good of individuals and the communities where they live. Unless, of course, one somehow convinces individuals and communities to actually *adopt* policies and behaviors grounded in absurd theory, in which case one's theory "succeeds" primarily in doing (potentially quite substantial) harm.

[3] Harry Brighouse and Adam Swift, *Family Values: The Ethics of Parent-Child Relationships,* ix.

The present project, then, is justified on several overlapping bases. The question of how children should be raised is both theoretically and practically interesting on its own. But to the extent that absurd or potentially harmful answers to that question enjoy some present currency among moral and political theorists, this is further reason for inquiry. Though advocacy is not the primary aim of this project, pointing out the errors of people *engaged* in advocacy is often indistinguishable from counter-advocacy, so much of what follows can serve as a philosophical defense of the institution of the family against some of the theories presently *en vogue*. It is not a defense against Rawls himself, but against a certain kind of philosophical courtier (so to speak)—the theorist who resolves an open Rawlsian "at least" by asserting that some aspirational aim or end-state principle places overriding constraints on parental discretion in upbringing. This defense is complicated by intuition and argument that children's interests often *do* constrain parental discretion, but these intuitions and arguments are not unanswerable. In particular, there is an important distinction between parenting choices that are *morally impermissible* and those that just arguably result in an undesirable or dis-preferred state of affairs.

Or so I argue, by applying the moral and political philosophy of T.M. Scanlon to the upbringing question. Chapter 1 explores Scanlon's account of right and wrong or, at least, those portions most plainly applicable to matters of upbringing. This requires some exegesis, given Scanlon's tendency to mention upbringing only in passing, but his approach to rights and interests accommodates more particular inquiry without substantial revision. One drawback to adopting Scanlon more or less uncritically is that anyone who rejects Scanlon's account of right and wrong will have largely the same

objections to my account of upbringing—just as anyone who rejects Rawls' account of equality will have largely the same objections to derivative accounts of upbringing. It is not my intent to offer a general defense of Scanlon's contractualism here, but it does seem to me that honest approaches to the upbringing question are most compatible with contractualist answers. To the extent that Scanlon's contractualism does generate a more plausible account of upbringing than alternative approaches, this additionally seems like good reason to favor Scanlon's analysis on other matters.

Scanlon's account of right and wrong is not the whole story, of course, so more will be said concerning contractualism in Chapter 2. Crucially, Scanlon himself observes that although the values of parenthood both shape and are shaped by "what we owe to each other," "being a good . . . parent involves understanding and responding to values that go beyond this central form of morality."[4] One extremely common way to talk about the moral domain of parenting is to make reference to children's "best interests," but unfortunately this has led some theorists to minimize or even disregard uniquely parental values in connection with the raising of children—at best treating such values as derivative of or subordinate to children's interests. Taking uniquely parental values seriously can help to avoid the absurdities generated by competing accounts of upbringing.

With the framework of contractualism in place, I examine some of these competing accounts of upbringing. Chapter 3 deals with the idea, most famously asserted by Joel Feinberg, that the relationship between parental authority and children's rights should be understood in terms of a "trust." While I do not deny that treating the parent-

[4] T.M. Scanlon, *What We Owe to Each Other*, 174.

child relationship as a trust has some appeal, I argue that it is potentially question-begging in ways that caution against this approach. Chapter 4 addresses the role "equality" plays in upbringing, especially as asserted by Harry Brighouse and Adam Swift. In spite of offering a theoretical account of upbringing that appears broadly compatible with my own view, these authors conclude that it is morally permissible to prevent parents from enrolling children in private schooling or bequeathing to children family wealth. The *prima facie* absurdity of such conclusions suggests very strongly that something has gone awry, whether in Brighouse & Swift's theorizing or their empirical understanding. Chapter 5 is a response to a similarly perplexing assertion by Matthew Clayton that the "autonomy" of children forbids parents from enculturating them with particular conceptions of "the good," for example by taking them to church or teaching them that all religion is superstitious nonsense. All of these chapters are guided by the aim of participating in what Scanlon identifies as a "continuing process"[5] of identifying morally relevant considerations for acting as we do (or should).

The final chapter of this project examines, through a contractualist lens, the contemporary public policy issue of state-mandated cultural education for the children of migrants in Denmark. There are a variety of similarly extant debates concerning children and public policy, any one of which might serve to demonstrate in detail the practical application of the contractualist account of upbringing generated and honed in preceding chapters. But the situation in Denmark has a number of features that make it especially interesting. In particular, it highlights very well the interests that non-parents have in the

[5] Ibid., 157.

upbringing of children in their community—interests in which child-directed public policy is often purportedly grounded.

Admittedly, much of what follows tends toward the polemic, albeit in a purely scholarly sense. This is at least partly a consequence of writing applied contractualism in the liberal tradition. Rawlsian egalitarianism, in all its many flavors, is by far the dominant mode of contemporary moral and political theorizing. It would be quite a coincidence for this to be totally unrelated to the contemporaneous rise of political and cultural developments that undermine the institution of the family, to the detriment of families and, perhaps, nations. But even if it *is* a coincidence, it remains that heterodox scholarship on upbringing must today contend not only with a body of (often, celebrated!) theoretical literature too voluminous to comprehensively address, but also a cluster of cultural dogmas so contentious that they have been colloquially dubbed the "Mommy Wars." Such meta-philosophical concerns are not the subject of this project, so I will strive (and, occasionally, fail) to keep related remarks prefatory. But it may be helpful to the reader to note from the outset that this project contains very little in the way of specific upbringing recommendations, beyond arguing for the permissibility of some things that competing and influential accounts have condemned as impermissible, and vice versa. Among the claims made both explicitly and implicitly herein, the central one is this: theorists who, based on their prior commitment to various egalitarian or communitarian political theories, seek to place novel constraints on parental discretion in upbringing, are in general advocating for the enactment of policies that are themselves morally impermissible.

CHAPTER 1

REASONABLE CAREGIVING

There is a commonplace, sometimes codified into law, that the primary consideration of upbringing is how caregivers attend to the realization of children's "best interests." This chapter discusses some possible ways to think about what makes an upbringing good, and whether or to what extent a child's "best interests" comprehensively identify the features of a genuinely good upbringing. One of these ways—the one I will call *reasonable caregiving*, though the relevant question will be developed throughout this chapter, and a final formulation of the answer will not be available until late in Chapter 2—attempts to account for the rights and interests that people, including but not limited to children, have. It would not be incoherent to contemplate matters of upbringing without reference to such constraints, especially where those constraints arise from empirical rather than theoretical concerns. But to the extent that one's thinking about upbringing does address the rights people have, some identification of what it means to have a "right" will be necessary for inquiry to proceed. Although children's "rights" are often discussed in aspirational terms, it is not clear that this approach can meaningfully account for the rights of others also. The contractualist account of rights offered by T.M. Scanlon is preferable, in this and other ways. The final section of this chapter illustrates some of the advantages of contractualist analysis by examining the landmark American case *Wisconsin v. Yoder* alongside some of the criticism it has accrued.

1. Three Approaches to Upbringing

The upbringing question—"how should children be raised?"—is often asked in hopes of learning what choices caregivers should make to ensure the *best possible* outcomes for children. Which toy will ensure optimal neurodevelopment? Which school will impart the finest education? Which church will inculcate the keenest moral sensibilities? Is there some person, smarter or kinder or wealthier than the child's "default" caregivers, who can be persuaded to raise this child instead? If we want to know how to raise children such that their lives *could not possibly* go (or have gone) better, given different childhood experiences, we might say we are interested in the *ideal upbringing*. Doubtless some caregivers consider this their duty, impossibly demanding though it may seem. Indeed it might be a perfectly worthwhile aspiration in spite of the veritable certainty of falling short.

On a slightly less demanding view, incorporating a firmer nod to "ought implies can," the question might be asked in hopes of learning what choices caregivers should make to ensure the best possible outcomes for children *given that* children are ordinarily stuck with a particular caregiver or set of caregivers until they reach adulthood—and that these caregivers will, rightly or wrongly, not ordinarily be inclined to pass the privilege along to someone else. The question is then how children can be raised such that their lives could not possibly go (or have gone) better *absent alternative caregivers*; call this *ideal caregiving*. Like ideal upbringing, ideal caregiving might be a worthwhile aspiration. It also has the appeal of contemplating how specific caregivers might best *carry out* their role, rather than inviting them to first verify that no one in the world is better-suited to it.

Yet even ideal caregiving seems impossibly demanding. If children *should* be raised such that their particular caregivers *could not have given better care*, it is hard to imagine any child actually receiving ideal caregiving. For example, perhaps I could be a better caregiver by securing a high-paying job as an attorney instead of pursuing a career teaching philosophy. My children could live in a nicer neighborhood, attend better schools, and enjoy greater variety in their learning and leisure activities. But suppose I don't particularly *want* full-time employment as an attorney—suppose it would impose costs on me that I am unwilling to bear in exchange for moving my children from their comfortable suburban lifestyle to a more-comfortable suburban lifestyle with a slightly bigger house, more exotic vacations, and access to more expensive educational opportunities. If my children should be raised such that their lives could not possibly go better, short of assigning their upbringing to a superior caregiver, then it would appear that I am not raising my children as I should.

In the face of such analysis, it is tempting to offer justifications. I might clarify that *if* working as an attorney would spare a child of mine from, say, homelessness or hunger or pain, I would assume the associated costs without hesitation. I might say "I'm teaching my children the value of sufficiency over excess" or "I'm setting an example of how to live a life of meaning rather than avarice." I hope these things are true, and appreciate anecdotes justifying quality caregiving over caregiver income! Nevertheless, I am persuaded by empirical inquiries that family income correlates strongly with children's apparent well-being,[1] in spite of any self-serving confirmation bias I might

[1] See e.g. Shannon Cavanagh, "An Analysis of New Census Data on Family Structure, Education, and Income."

care to exercise. Parents who decline to pursue increased income, at least where such pursuit poses little possibility of making a child's life go worse in other ways, likely are not ideal caregivers—and that is just one of many ways for caregivers to fall short. It is perhaps uncontroversial that a caregiver who smokes tobacco at home is not ensuring the best possible outcomes for their children, but what about caregivers who consume alcohol, or allow children to watch television, or permit children to use social media, or take children to church? These are all things some adults do that some other adults will argue fall short of ideal caregiving. But has there ever been a caregiver who *never,* based on other considerations, acted to secure something less than the apparent "best possible" life for their children? This seems unlikely.

So perhaps all children are raised in ways they should not be raised! Ideal upbringing and ideal caregiving are two versions of what Matthew Clayton calls "maximalist" positions—accounts of child-raising that assert "children are owed the best available upbringing."[2] Caregiving idealism suggests a narrower interpretation of "available" than upbringing idealism, so there are certainly different ways to be a maximalist, but Clayton suspects "we should be maximalists in general" because "anything less than maximalism implies missed opportunity."[3] How much should it bother us, then, that probably *nobody* lives a life devoid of missed opportunity? *Should* it

[2] Matthew Clayton, "How Much Do We Owe to Children?," 249. I use the term "maximalist" to refer to any theory that appears to posit an obligation for caregivers or societies to provide "as much as possible" of something identified as good, be that material wealth, learning opportunities, or more abstract goods like autonomy. The broadest kind of maximalism would be a maximalism that posits an obligation to provide as much as possible of *every kind of good*; narrow maximalism simply posits an obligation to provide as much as possible of *some* kind (or kinds) of good.

[3] Ibid., 251.

bother us that, in fact, it is almost certainly not possible to live such a life? Perhaps all caregivers, or nearly all, fall short; perhaps all children, or nearly all, should (at least in theory) be raised differently.

Even if this is so, caregivers can accept upbringing or caregiving idealism in a theoretical or aspirational way but still sometimes want to know how their children should be raised given that no better caregiver is likely to assume the role, *and* given that securing a child's best possible outcome might impose intolerable costs elsewhere, even after various caregiver limitations have been accounted for. Call this the *reasonable caregiving* approach to the upbringing question. On this approach, the question of how children should be raised seeks a first-person, all-things-considered account of caregiver obligations. Reasonable caregiving does not presuppose that children should have the best possible childhood, or that children should have the best possible childhood given practical constraints on caregiving. Reasonable caregiving does presuppose that children *have* caregivers, but this is a good assumption insofar as human children are altricial; absent, at minimum, someone to periodically place appropriate sustenance in their mouths, human children less than about two years old (and perhaps many years older) will simply die. This is an important empirical fact about humans: all of us have an existence that depends not only on the tolerance extended to us by others, but on the willingness of some of those others to actively sustain our lives at direct cost to themselves. So assuming children should be raised *at all*, the existence of a caregiver/child relationship is baked into the question of *how*. The ways of thinking about that question can be restated in the following ways:

- *Ideal Upbringing:* What arrangements and experiences would result in the best possible life for this child?
- *Ideal Caregiving:* What arrangements and experiences would result in the best possible life for this child, short of terminating existing caregiving arrangements?
- *Reasonable Caregiving:* Given the facts about the world they live in, who they are, what they know, and the resources available to them, what should this caregiver do in connection with that child?

Note that these are not formulations of the relevant standards, but ways of asking after such formulations—provisional ways of framing the upbringing question more clearly, in hopes of generating a useful answer. Thinking about ideal upbringing seems worthwhile, both in the development of theory and when hypothesizing about ways to improve one's present circumstances. However most such hypothesizing probably occurs at the level of ideal caregiving, assuming caregivers are not generally interested in or capable of improving their children's circumstances by replacing themselves with superior caregivers. Contemplation of ideal caregiving is a way for caregivers to ask, "how can *I,* personally, make this child's life better?" But there are many situations in which causing a child's life to go better would be objectionable on other grounds. The 1991 case of Wanda Holloway serves as a memorable example: when her daughter, Shanna, failed to secure a spot on her junior high school's cheerleading squad, Halloway took it on herself to create a new opening. This she planned to do by giving one of the girls on the squad a reason to quit: the death of a loved-one. Fortunately for Verna Heath, the mother of a girl who scored better than Shanna at squad tryouts, the person Halloway

contacted to hire a "hitman" did not actually kill Heath, and instead reported the request to law enforcement.[4] Assuming the best possible life for Halloway's daughter included participation on the junior high school cheerleading squad,[5] and assuming Halloway had proven capable of carrying off her plan successfully and with no collateral impact on Shanna, she would appear to be meeting the standards of caregiving idealism. Clearly this hypothetical Halloway would be seriously blameworthy, but would it be accurate to say she was a bad *parent?*

I think yes, but an affirmative response here suggests that giving children the best possible upbringing or care is at times something caregivers should not do, *as caregivers*. Murdering the mother of your daughter's cheerleading rival is not a case of quality caregiving gone too far; it is not an elsewise-bad thing that exuberant parents might reasonably suspect they have a responsibility to carry out. It is *not how children should be raised*. Rather, a list of things that it is actually permissible for caregivers to do surely cannot include actions that violate anyone's rights, no matter how much better a child's life might be made by such violations. This suggests the following amendment to the framing of an inquiry into reasonable caregiving:

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[4] See Maureen Balleza, "New Trial for Woman Convicted in Plot Against Daughter's Rival," *New York Times* (9 Nov. 1991), https://www.nytimes.com/1991/11/09/us/new-trial-for-woman-convicted-in-plot-against-daughter-s-rival.html.

[5] This may be a significant counterfactual; some twenty years after these events, Shanna claimed in an interview that she never really wanted to be a cheerleader, and only tried out in the first place because it was her mother's dream. See Anne Lang and Kristen Mascia, "The Texas Cheerleader Case: A Daughter's Painful Journey," *People* (20 Feb. 2012), http://people.com/archive/the-texas-cheerleader-case-a-daughters-painful-journey-vol-77-no-8/. The question of whether Shanna might feel differently today had she simply made the team to begin with is a specific instance of broader questions that will be contemplated in Chapter 5, which deals with the problem of retrospective regret adults sometimes experience about their upbringing.

- *Reasonable Caregiving:* Given the facts about the world they live in, who they are, what they know, and the resources available to them, *and without violating anyone's rights,* what should this caregiver do in connection with that child?

But a complete understanding of the question as modified requires an inquiry into the rights people actually have, which in turn depends on what it means to have a right in the first place.

2. Excluding "Manifesto" Rights

Such inquiry might be unnecessary, or at least reasonably straightforward, if there was anything like a consensus view on the nature of rights. However I am unaware of any such consensus. Even generic rights claims that seem obviously true, like "humans have a right to not be killed by hired hitmen," have a way of becoming matters of serious dispute—for example, when the person hired to do the killing acts under the auspices of euthanasia or abortion. So, to put it mildly, "rights" are the site of substantial philosophical dispute and, often, confusion, perhaps especially when it comes to parents and children. This is particularly evident in one of the most influential declarations of children's rights ever penned: the United Nations Convention on the Rights of the Child (CRC).[6] Like many political declarations of its kind, the CRC spends no time defining key terms. This has not prevented 194 countries (notably excepting the United States, South Sudan, and Somalia) from ratifying it, however, nor discouraged the approbation of theorists:

[6] Convention on the Rights of the Child, 20 Nov. 1989, 28 ILM 1448.

> [T]he CRC is generally thought to get it right. It codifies a recognisable canon of thought about the rights of children. The rights given to children in the CRC are the rights that we—at least the 'we' of Western liberal democratic post-Enlightenment societies—now think it important to give children. The CRC gives children rights to, *inter alia*, freedom of expression, association, thought, conscience and religion, protection against abuse and violence, enjoyment of the highest attainable standard of health, education, rest and leisure, protection from economic exploitation and hazardous work.
>
> . . . [A]nyone concerned with the welfare of children would have good reasons to endorse the CRC, and to make use of its provisions in any argument to advance their interests.[7]

David Archard's endorsement of the CRC is not unqualified; for example, he claims that the CRC's repeated appeal to children's "best interests" should be interpreted as rhetoric rather than a codification of maximalism.[8] Archard's corrective does render some of the CRC's puzzling assertions substantially more plausible, by moving them away from codification of something like ideal upbringing toward codification of something like reasonable caregiving. However there is no apparent basis for Archard's interpretation in the text of the CRC itself. Rather, Archard's recognition that the CRC's reference to children's "best interests" must be merely rhetorical identifies a problem that affects much of the document, including the signatory process—namely, that the document does not really stand on its own. This may be why "the practical and legal impact of the CRC is at present [so] limited" that it "has not yet had a significant impact

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[7] David Archard, *Children: Rights and Childhood,* 108.

[8] Ibid., 113, Archard writes,

> Construed as a maximising principle, the best interests requirement seems unfeasibly demanding. . . . It is probably most sensible to interpret the 'best' of the 'best interests principle' as serving, rhetorically, to emphasize that the child does have interests of her own, and that these have an importance and weight that should not, when set besides those of adults, be discounted or ignored.

on domestic legislation."[9] Aside from being occasionally referenced to criticize the United States for having the unique (among developed Western liberal democratic post-Enlightenment societies) temerity to decline ratification of a doctrinally vague but emotionally appealing treaty which *no* signatories seem especially committed to putting into enforceable practice, the CRC is functionally dead letter. Strictly speaking, contra Archard, the CRC "gives" no children any rights at all, legal or otherwise.

Unless, perhaps, one accepts something like Joel Feinberg's account of what are sometimes termed "manifesto" rights. Manifesto rights are "human rights," "generically moral rights of a fundamentally important kind held equally by all human beings, unconditionally and unalterably."[10] These are associated with no particular duties, at least to any concretely identifiable actors, instead "expressing the conviction that they ought to be recognized by states as potential rights and consequently as determinants of present aspirations and guides to present policies."[11] This definition is a good fit for many of the rights asserted in the CRC, as well as for the CRC's apparent interpretation by signatories as merely aspirational. Aspiration does seem to play an important role in human endeavor. However it also foments substantial confusion to conflate moral or legal *aspirations* with moral or legal *rights.*

Consider, for example, people who aspire to immortality. This should not be too difficult, given that there is little in the world more obviously of moral weight to most people than their own continued existence. Of course, the chances anyone has of actually

[9] Ibid., 109.

[10] Joel Feinberg, *Social Philosophy*, 85.

[11] Ibid., 67.

living forever are small—asymptotically approaching zero. Actuarial tables suggest there is a much better chance of being killed by *basically anything* than of living forever. Still, many people take affirmative steps, as often as they can, to live as long as possible, and encourage others to do the same, whether those others think they want to live forever or not. It appears to be in virtually everyone's interests to not die, ever, particularly if their immortality results from processes that alleviate illness and the physical deterioration associated with advancing age. People who recognize this aspiration might advocate for and contribute to the funding of organizations dedicated to the eventual eradication of human death. They might be familiar with myriad practical and theoretical objections to immortality and simply find none compelling, especially where those objections are made in connection with other arguments concerning the immortality of human souls. If someone developed a medical treatment capable of granting immortality tomorrow, people who aspire to immortality would likely pour every resource available to them into securing that treatment for themselves and their loved-ones. They might even believe that developing human longevity toward immortality should figure heavily in the present political policies and spending priorities of every nation on Earth.[12]

Given the existence of such aspirational thinking about immortality, might humans have a "manifesto right" to become immortal? On Feinberg's approach, the answer appears to be *yes*. Because manifesto rights assert that individuals can have an unconditional and unalterable claim to some state of affairs that no one has any particular

[12] There is much more that might be said about immortality, but it is not the subject of this project. Readers who find philosophical inquiry into human immortality more compelling a topic than upbringing should consult Nick Bostrom and Rebecca Roache's "Ethical Issues in Human Enhancement."

duty to promote or provide, "impossibility" appears to be no bar to the assertion of manifesto rights, much less "improbability." But while there is nothing obviously incoherent about aspiring toward apparently impossible or improbable things, there is an objectionable amphiboly in an assertion like "I have the right to bear arms and live forever." One's moral and legal right to bear arms places identifiable limits on other people's behavior—though they are, surely, defeasible limits. An apparent manifesto right to immortality bears no such relation to anyone. This is not an argument that there are no manifesto rights, though perhaps it is true that there are no manifesto rights. Rather, this is an argument that using the word "rights" to refer to manifesto rights creates confusion that is easily avoided. It is avoided by simply being clear about the difference between the ways we'd prefer the world to be, and the ways we consider ourselves and others morally obligated to act given (among other things) the interests of others. The most obvious way to be clear about this difference is to *use* the word "aspiration" when we *mean* aspiration. Then we can use the word "rights" when we are talking about ways in which some people's discretion is morally constrained by the interests of others.

It might be objected that this fails to charitably consider either the CRC or the idea of manifesto rights. Many, perhaps most, "manifesto rights" express neither impossible nor improbable aims; indeed much of the CRC simply purports to codify matters of broad, cross-cultural agreement concerning the things that are important to human children everywhere. Furthermore, it seems likely that at least some of the rights identified in the CRC are not manifesto rights at all, but moral rights complete with correspondingly concrete obligations, regardless of whether signatory nations ever

actually treat them that way. Portions of the CRC likely do identify important moral rights, and a comprehensive theory of ideal upbringing or ideal caregiving might very well require an account of something like manifesto rights.

Nevertheless, if reasonable caregivers must not violate anyone's rights, no matter how much better a child's life might be made by such violations, accounting for manifesto rights would make reasonable caregiving indistinguishable from maximalist accounts. Given Feinberg's definition of manifesto rights, to "violate" them appears to be a matter of negatively impacting someone's likelihood of securing some aspiration—for example, a legislative body might be accused of "violating" children's manifesto right to quality education by prioritizing corporate tax breaks over increased spending on public schooling.[13] But imagine a caregiver with children who have a manifesto right to the best

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[13] It might actually be better to say that manifesto rights can't be violated, because they are not rights at all, but merely a rhetorical device for expressing certain kinds of need or want even in the absence of much likelihood (or possibility) of need- or want-fulfillment. In fact Feinberg himself sometimes treats them this way, distinguishing them from "actual" rights:

> Manifesto writers are easily forgiven for speaking of [manifesto rights] *as if* they are already actual rights, for this is but a powerful way of expressing the conviction that they ought to be recognized by states as potential rights and consequently as determinants of present aspirations and guides to present policies. That usage, I think, is a valid exercise of *rhetorical license*.

Joel Feinberg, *Social Philosophy*, 67 (emphasis added).

I disagree that this is a valid exercise of rhetorical license, because it confuses discourse. I also think it is only "easily forgiven" by people whose projects stand to benefit from a little philosophical sleight-of-hand. I have treated manifesto rights as if it is possible to violate them because I want to take seriously the possibility that manifesto rights are more than a bad-faith rhetorical device for misappropriating the moral urgency of rights discourse in furtherance of mere political aspirations. However if it is asserted that manifesto rights can't be violated because they are not rights at all, then they needn't be *addressed* when it is observed that reasonable caregiving forbids rights-violations in furtherance of a child's interests.

Stated a little differently: I *suspect* the assertion of manifesto rights is most often a

possible care, and further suppose that giving those children the best possible care will negatively impact some third-party's manifesto rights. Whatever the caregiver chooses, they will be "violating" someone's manifesto rights—their child's, or someone else's. In cases where apparent rights clash, theorists often propose balancing tests, but there does not seem to be any coherent way for "fundamentally important" rights held "unconditionally and unalterably" to be subjected to balance without making them subordinate, conditional, or alterable.[14] So in spite of their potential helpfulness in identifying theoretical ideals, manifesto rights must be excluded from the "rights" that reasonable caregiving seeks to accommodate.

The exclusion of manifesto rights from consideration also suggests something about the kind of rights reasonable caregiving *should* accommodate: rather than aspirationally guiding policy, relevant rights are those that impose specific duties on

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rhetorical move of the kind characterized by Nicholas Shackel, in "The Vacuity of Postmodernist Methodology," as a motte-and-bailey doctrine. What proponents of manifesto rights appear to actually want is for their political aspirations to be treated in academic and public discourse as having the weight of moral obligations; this desirable territory is characterized as a "bailey." But a bailey is not an especially defensible position, so when critics raise objections it is useful to be able to retreat into the highly-defensible "motte"—in this case, "valid exercise of rhetorical license." What I am pointing out is, whether in the manifesto writer's motte, or the manifesto writer's bailey, in *neither* case is reasonable caregiving constrained by the assertion of manifesto rights.

[14] One way to balance conflicting manifesto rights might be to say that they are held unconditionally and unalterably even when circumstance requires they be violated. But if this is correct, it stops being clear how holding a right could be meaningfully distinct from having an interest. Even if rights are just *important* interests, calling them "rights" then looks like either a rhetorical or question-begging move, depending on whether the associated claim is, respectively, "these interests are important" or "these interests have priority over those interests." That is, if identifying something as a "right" is just another way of claiming that an interest is important, then it is simply rhetoric. If identifying something as a "right" is what we do to claim that one interest has priority over a competing interest, then we are assuming the thing we should be proving. This seems like further reason to be skeptical of "manifesto rights" generally.

caregivers. Meeting this expectation does not appear terribly difficult; in fact T.M. Scanlon has suggested that there is "fairly wide agreement among philosophers writing about rights that claims about rights involve, on the one hand, claims about duties that particular agents have and, on the other, claims about the values that these duties protect or promote, which ground the claim that there are such duties."[15] Still, wide agreement is not *total* agreement, and given how often philosophers of childhood, as well as political documents like the CRC, appeal to maximalism or manifesto rights or otherwise fail to identify duties particular agents have, it is important to be clear that such accounts have little, if anything, to do with reasonable caregiving.

3. Why Rely on Scanlon?

This appeal to Scanlon on the question of rights is inspired in part by his expression of another important insight, something Scanlon identifies as foundational to his contractualism:

> Those who are concerned with morality look for principles for application to their imperfect world which they could not reasonably reject, and which others in this world, who are not now moved by the desire for agreement, could not reasonably reject should they come to be so moved.[16]

In other words, according to Scanlon, the "ideal to which contractualism appeals" is "that of being able to justify your actions to others on grounds that they could not reasonably reject."[17] On this view, rational beings have reason to want to be able to justify their actions to others, even when they are unable or unwilling to *actually* justify their actions.

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[15] T.M. Scanlon, "Rights and Interests," 69.

[16] Scanlon, "Contractualism and Utilitarianism," 111.

[17] Scanlon, *What We Owe to Each Other*, 154.

Considered in practical terms, the idea that morality relies in part on others being moved by a desire for moral agreement captures the central psychological importance of being both willing and able to *coexist* with others. Many contemporary accounts of rights are explicitly or implicitly liberal—a Western intellectual tradition which is historically and at heart concerned with matters of coexistence.[18] However these accounts often seem to take for granted either that we all already wish to coexist, or that, to exist at all, we *must* coexist, whether we wish to or not. Even John Rawls, unquestionably the most influential liberal theorist of the 20th century, paints a compelling picture of our ideally rational pre-existent selves selecting principles for coexistence with no knowledge of our "place in

[18] A particularly compelling characterization of liberalism was recently penned by pseudonymous psychiatrist blogger Scott Alexander, in an essay entitled "Against Murderism."

> People talk about "liberalism" as if it's just another word for capitalism, or libertarianism, or vague center-left-Democratic Clintonism. Liberalism is none of these things. Liberalism is a technology for preventing civil war. It was forged in the fires of Hell—the horrors of the endless seventeenth century religious wars. For a hundred years, Europe tore itself apart in some of the most brutal ways imaginable—until finally, from the burning wreckage, we drew forth this amazing piece of alien machinery. A machine that, when tuned just right, let people live together peacefully *without* doing the "kill people for being Protestant" thing. Popular historical strategies for dealing with differences have included: brutally enforced conformity, brutally efficient genocide, and making sure to keep the alien machine tuned *really really carefully*.

During the initial drafting of this chapter, I referred to Alexander as an "obscure" pseudonymous psychiatrist blogger, but his views have lately become part of a national conversation about liberalism, thanks in part to approving citation in the national press. See for example David Brooks, "Understanding Student Mobbists," *New York Times* (8 Mar. 2018), http://nytimes.com/2018/03/08/opinion/student-mobs.html. While that conversation is not directly relevant to the present inquiry, there is a very ancient sense in which all political debates are relevant to the present inquiry: the impact they have on the relationship between family and government, about which more will be said in later chapters.

society"[19]—but why, in this tale, do our pre-existent selves decide that they want any place in society at all? His assumption (and I don't think it's a *bad* assumption; certainly it is common one among liberal thinkers generally) appears to be that we all want to be better off, and social cooperation contributes to our welfare. But what, in the parlance of business, is the "best alternative to a negotiated agreement" (BATNA) for pre-existent intelligences haggling over the implementation details of eventual social cooperation? That is, if we found ourselves unable to reach an accord, what would be the result? Would it be a Hobbesian state of nature? Could pre-existent intelligences engage in rational negotiations *without* knowing their BATNA? Of course, like Hobbes, Rawls does not mean for such stories to be taken literally, and the fact that we do find ourselves living in a society (or pitying people in places where peaceful coexistence can't be taken for granted) may justify certain assumptions about the desirability or necessity of coexistence. Still they largely remain assumptions. Scanlon's account, by contrast, does not assume that people necessarily wish to coexist, but frames his contractualist morality as an exploration of what it is reasonable for people to do *when they have this desire.* The "only relevant pressure for agreement comes from the desire to find and agree on principles which no one who had this desire could reasonably reject,"[20] or in other words, from the desire to be able to justify our actions to others.

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[19] John Rawls, *A Theory of Justice*, 137.

[20] Scanlon, "Contractualism and Utilitarianism," 111. In later work, Scanlon amends his view to encompass reasons, *not* necessarily reducible to desire, to find and agree on such principles, however he does not appear to believe that the earlier formulation is incorrect, only that it is unnecessarily narrow in a way that generated certain objections inspiring reformulation. That is, on Scanlon's view, people have good reason to pursue coexistence even if they do not particularly *desire* to coexist. Still it seems to me that such desire is an important psychological aspect of applied contractualism.

It seems to me that, in addition to reasons we have as rational agents to pursue coexistence, we begin to accumulate practical, personal reasons to behave in ways we can justify to others from the moment we come into existence. The very first practical encounter any of us have with anyone's desire to be able to justify their actions to others is not subjective, but as someone "not now moved by the desire for agreement"—on account of our infancy. When we are helpless children, our continued existence absolutely depends on the willingness—the *desire*—of caregivers to coexist with us, and their sensitivity to what that willingness reasonably requires of them. Regardless of what rational beings actually have reason to do, there are no humans who survive beyond infancy in the absence of some minimal psychological commitment from caregivers to the *practice* of coexistence, which makes caregiving the practical foundation of all human thought and experience—including, and perhaps especially, moral reasoning. This is because the fact that others cared for us through our own incapacity is itself a reason for us to act in ways we can justify to them. The centrality of caregiving to our psychological experience of morality has led some to criticize liberal theory generally, and Rawls in particular, as making normative claims that must borrow moral motivation from psychological experiences, like the love of parents, for which the theory in question furnishes no normative demand.[21] Scanlon's contractualism evades this criticism by

[21] This point is perhaps most eloquently made by Annette Baier, using Rawls as an exemplar of all "current men's moral theories" because she regards his theory as "the best" of those available:

> Rawls' sensitive account of the conditions for the development of that sense of justice needed for the maintenance of his version of a just society takes it for granted that there will be loving parents rearing the children in whom the sense of justice is to develop. "The parents, we may suppose, love the child, and in time the child comes to love and trust the parents."

focusing, not on what people would choose if they were stripped of their identities and negotiating on the structure of society, but what they have reason to do given the circumstances they are in—and we are *all* in the circumstance of having been *cared for*, even if, at times, grudgingly, imperfectly, or badly. It is easy to imagine caregivers looking (perhaps, desperately!) for principles for application to their imperfect world *given that* they want to coexist with the tiny, vulnerable human in their charge. I am aware of no other liberal theory that so clearly captures in its foundational claims the lived experience of caregiver-child relationships.[22] This strikes me as excellent reason to

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> Why may we suppose this? Not because compliance with Rawls's version of our obligations and duties will ensure it. Rawls's theory, like so many other theories of obligation, in the end must take out a loan not only on the natural duty of parents to care for children . . . but on the natural *virtue* of parental love (or even a loan on the maternal instinct?).

"What Do Women Want in a Moral Theory?," 6. It does seem evident that Rawls was perplexed by familial relationships. What Baier missed was that there actually *was* a "man's theory" capable of accommodating her criticism. Whether her oversight is explained by the fact that "What Do Women Want in a Moral Theory?" was published only a few years after Scanlon's "Contractualism and Utilitarianism," or that Scanlon does not specifically contemplate childhood in that piece, is difficult to discern—especially since the bulk of Baier's criticism of Rawls was omitted from her essay's original publication. Whatever the case, Scanlon had, albeit perhaps not deliberately, already described a theory of obligation with no need to "take out a loan" on the virtue of parental love. On Scanlon's view, rational beings have normative reason to coexist even if they are not psychologically inclined to do so. That loving parental relationships incline us, psychologically, toward a desire to be able to justify ourselves to others is a reason to favor and encourage the development of such relationships, but nothing is "loaned" by recognition of that fact. Whether this means it was not Rawls but Scanlon who penned the "best," "men's" moral theory of the twentieth century, I leave an open question.

[22] Here Carol Gilligan and her disciples might protest that I was approaching the event horizon of enlightenment, only to veer wildly astray at the final instant. If the lived experience of caregiver-child relationships ought to be foundational to our moral theory, then perhaps liberalism is not the right moral theory! Of course, Gilligan's own views, famously promulgated in *In a Different Voice,* seem to imply that my own commitment to liberalism may merely evidence my background and gender; certainly I am neither a psychologist nor a mother, while Gilligan is both.

The best response I have is that, if care ethics and contractualism lead to similar

rely on Scanlon's insights in the development of my own philosophy of upbringing, and neatly parallels Scanlon's own phenomenological reasons for accepting contractualism.[23]

4. Scanlon on Permissible Caregiving

After excluding manifesto rights from consideration and identifying Scanlon's contractualism as the relevant framework for analysis, the claim that caregivers should not violate anyone's rights can be seen as a claim that it would be wrong for caregivers to otherwise-improve the lives of children through rights-violations, because to do so would violate a principle "for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement."[24] The practical identification of such principles requires an "informal comparison of losses,"[25] but at the level of normativity it is true by definition that no one could reasonably reject a principle

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claims, so much the better for both. I don't presently see myself as having anything of value to say about the relationship between care ethics, feminism, and liberalism. It is not even clear to me how antagonistic the relationship really is, though certainly some, like Baier, portray it that way. Indeed, one reason I have so far referred to "caregivers" rather than "parents," much less "mothers and fathers," is that I do not want to be guilty of assuming too much when I make arguments later about the importance of mothers and fathers. Possibly this is a mistake; perhaps it would be better to begin with the care of mothers and fathers, without whom none of us would exist, and develop a philosophy of upbringing from there. But this project aims in great measure at formulating a liberal critique of certain liberal accounts of upbringing; inquiry into whether my account might be specifically compatible or incompatible with care ethics or other feminist theory might be worthwhile, but is simply beyond the present scope.

[23] Specifically, Scanlon writes, "I myself accept contractualism largely because the account it offers of moral motivation is phenomenologically more accurate than any other I know of." *What We Owe to Each Other,* 187.

[24] Ibid., 153.

[25] Scanlon, "Contractualism and Utilitarianism," 128. In fact Scanlon claims that informal comparison of losses is "central" to his contractualism.

requiring caregivers to refrain from rights violations. This is because rights are constituted by valid moral principles. On Scanlon's view,

> the claim that there is a right is a claim that certain limitations on the discretion to act of individual and institutional agents are *necessary* if important interests are to be adequately protected, and *feasible* as a way of providing this protection. This claim of feasibility is that the cost these limitations impose on our other interests is acceptable given the importance of the interests being protected.[26]

In other words, to correctly identify something as a right is to say that an informal comparison of losses would yield (or has already yielded) the claim that a rule limiting relevant discretion in order to protect an important interest cannot be reasonably rejected.

Or so it seems to me. Scanlon tends to write about rights and contractualism separately, and the concise definition of rights he routinely deploys in more recent work appears to have evolved from a comparatively complicated account with no immediately obvious connection to contractualism,[27] so the precise relationship between rules no one could reasonably reject and necessarily, feasible, interest-responsive limitations on discretion is not always clear. However, as Peter de Marneffe persuasively observes,

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[26] Scanlon, "Rights and Interests," 77.

[27] See for example Scanlon, "Rights, Goals, and Fairness," 89, where Scanlon suggests that

> the view that there is a moral right of a certain sort is generally backed by something like the following: (i) An empirical claim about how individuals would behave or how institutions would work in the absence of this particular assignment of rights (claim-rights, liberties, etc.). (ii) A claim that this result would be unacceptable. This claim will be based on valuation of consequences of the sort described [elsewhere], taking into account also considerations of fairness and equality. (iii) A further empirical claim about how the envisaged assignment of rights will produce a different outcome. The empirical parts of this schema play a larger or at least more conspicuous role in some rights than in others.

> if a rule prohibiting [something] is necessary to protect some important interest adequately, and this rule does not impose unacceptable costs on other important interests, then it makes sense to claim that no one could reasonably reject this rule as part of a system of rules for the general regulation of . . . conduct.[28]

A rule allowing caregivers to act in ways that give no weight to the interests of others would be impossible to reasonably justify to those others, because it is something they have every reason to reject.[29] A rule allowing caregivers to act in ways that give *insufficient* weight to the interest of others would likewise be impossible to reasonably justify to them. In general, whether

> a principle could reasonably be rejected, depends . . . on a comparison of the reasons that can be offered against it with those that can be offered in its favor against alternative principles from the point of view of people who occupy various positions in a situation of the kind to which the principle applies. We never know exactly which individuals will occupy these positions in all the various situations of this kind, so questions of right and wrong must be ones we can answer in the abstract, without such knowledge. The reasons we consider in assessing a principle are therefore are [sic] not precisely the reasons that particular actual individuals have, but what I call generic reasons—reasons that people in general would have in virtue of being in the positions in question.[30]

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[28] Peter de Marneffe, "Do We Have a Right to Use Drugs?," 240. While de Marneffe specifically makes this claim about government conduct, the relationship observed appears to hold true for any conduct.

[29] In particular, Scanlon writes,

> In the contractualist analysis of right and wrong, what is presupposed first and foremost is the aim of finding principles that others who share this aim could not reasonably reject. This aim then brings other reasons in its train. Given this aim, for example, it would be unreasonable to give the interests of others no weight in deciding which principles to accept. For why should they accept principles arrived at in this way?

Scanlon, *What We Owe to Each Other,* 192.

[30] Scanlon, "Reply to Gauthier and Gibbard," 181–182.

Any reason a caregiver might give, *qua* caregiver, to violate someone's rights would be a claim that, even though they *could* act in a way that adequately protected the interests of the rights-holder, *without* imposing unacceptable costs on their own (or their child's) interests, they have reason to not act in that way. But this is not the kind of behavior it is possible to justify to others; a rights-holder in such a case would have ample reason to reject any principle permitting such behavior. Since it is never permissible for caregivers to violate rights of this kind, a contractualist revision to the question of reasonable caregiving can incorporate concerns about rights violations by reference to permissibility:

- *Reasonable Caregiving:* What is permissible for this caregiver, given the totality of their circumstances, to do in connection with this child's upbringing?

This contractualist revision of the question seems sufficiently clear that we can also begin to sketch out an answer. So far, Scanlon's contractualism furnishes an answer that looks something like this:

1. Caregivers should act in accordance with a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.
    a. This means, in part, that it is not permissible for caregivers to violate anyone's rights in pursuit of caregiving, because rights are constituted by principles that no one could reasonably reject.

This is a fairly straightforward gloss on Scanlon's contractualism, the kind we might naturally expect to generate by simply asking, "what does Scanlon's contractualism have to say about caregiving?" What is significant at this point is not so much Scanlon's answer, which has so far taken roughly the same form as all answers to the question "what does Scanlon's contractualism have to say about φ," but the way that Scanlon's contractualism clarified the question. The main clarification is that reasonable upbringing is a matter of *permissibility*, as distinct from maximalist accounts that focus on what is "best" along some other axis. Sometimes this is the "best interests" of the child, but it could also be some overriding or end-state principle to which a theorist is elsewise committed. For example, upbringing theorists apparently committed to equality as an end-state principle often appear to be answering a question like, "How should children be raised, *given* egalitarianism as a moral obligation?" Of course, there is nothing particularly objectionable about constraining philosophical inquiry in ways one happens to find interesting or enlightening (or correct). But resultant accounts are necessarily hypothetical: asking "how should I raise my child *if I want to be a good egalitarian*" differs very little from asking "how should I raise my child *if I want her to become a ballerina*," in the sense that even if the answer produced is very, very good, it will be of limited value to anyone who is opposed to, or even merely uncertain about, egalitarians or ballerinas.[31] And where such inquiries negligently or mendaciously fail to

[31] I am not, here, making the substantive claim that egalitarianism is morally optional. In fact contractualism does not entail egalitarianism, and so it is true that egalitarianism is not morally required of us. However all I am observing here is that contractualism helps to clarify the upbringing question in part by inviting us to think about *upbringing itself*, rather than inviting us to think about our prior commitments to other principles. This seems to me a much more plausible way to think about upbringing. It is true that one way

mention their prior commitments, they can appear to be exploiting the deep, protective emotional connection many people feel with children and childhood, in furtherance of separate (often, political; sometimes, suspiciously anti-family) aims. By contrast, the contractualist response to "how should children be raised?" is that children should be raised according to principles caregivers could not reasonably reject, and which others (including their children) could not reasonably reject should they come to be similarly moved. Rather than inviting caregivers to answer the upbringing question by contemplating egalitarianism, feminism, autonomy, or the like, Scanlon's approach invites caregivers to contemplate the particulars of caregiving and what it reasonably requires of them. Instead of making the question subordinate to other aims, Scanlon's contractualism clarifies what it is that the question means when asked by a caregiver in search of practical answers.

Here a clever reader might ask, "and what if I am opposed to, or even merely uncertain about, contractualism?" The short answer is that such a reader would presumably find propositions of the form "contractualism recommends φ" to be of limited value. But the goal of this chapter is not to demonstrate that contractualism recommends any particular φ. The goal of this chapter is to raise a practical question, unconstrained by prior philosophical commitments—how should children be raised?—and to show how careful thinking about the question leads to a (partial) answer: that the nature of caregiver-child relationships, the practical requirements for which include

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to undertake a project like this one would be to simply ask, "what does Scanlon think about upbringing?" But my own approach has been to *think about upbringing*, and discovering that this approach was compatible with Scanlon's contractualism was persuasive evidence, to me, that Scanlon's contractualism is the correct account of permissibility.

caregivers with some minimal psychological commitment to coexistence with their children, recommends contractualism as the best theory of permissible action. Contractualism, in turn, helps to clarify the upbringing question. Among other things, such clarification is essential to achieving a correct understanding of certain intuitions about caregiving—including judicial outcomes in cases philosophers of childhood tend to find perplexing. A brief discussion of the landmark American case *Wisconsin v. Yoder* will serve to illustrate how this unfolds.

5. *WISCONSIN V. YODER*[32]

A. The Facts

In Green County, Wisconsin, the children of Jonas Yoder, Wallace Miller, and Adin Yutzy (hereafter "the parents") were withdrawn from public school attendance after completing the eighth grade. This was in violation of Wisconsin's compulsory attendance law, which required children between the ages of 7 and 16 to regularly participate in full-day public or private schooling. The parents received a fine and appealed on grounds that the law violated (among other things) their First Amendment right to free religious exercise. They argued that because "high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students" while "Amish society emphasizes informal 'learning through doing;' a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than

[32] 406 U.S. 205 (1972).

integration with, contemporary worldly society," high school attendance endangered the salvation of their children and themselves.[33]

Wisconsin agreed that the parents had a legitimate religious interest at stake, but made a variety of arguments in defense of its position, most stemming from a failure—all too common, even among the judiciary, even today—to understand that "free exercise" does not mean freedom to believe what you want only as long as it makes no practical difference in anyone else's life. Religious liberty is adequately protected only when "free exercise" is understood to include action as well as belief—even, at times, when facially neutral regulations appear to forbid such activity.[34] Of special relevance to the present

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[33] Ibid., 211.

[34] See ibid., 220:

> [T]o agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment, and thus beyond the power of the State to control, even under regulations of general applicability. . . . This case, therefore, does not become easier because respondents were convicted for their "actions" in refusing to send their children to the public high school; in this context, belief and action cannot be neatly confined in logic-tight compartments. Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.

The language of undue burdens seems approximately analogous to the "feasibility" prong of Scanlon's definition of rights; that is, some religious practices can of course be forbidden by facially neutral statutes, and some cannot, but this will depend on a specific balancing of the actual interests at stake. American jurisprudence today appears to be in flux on the matter, as animus against religious belief and practice alike has inspired a succession of high-profile cases that appear to be aimed at chasing religion out of the public square and excluding religious reasoning from the Overton window of public discourse. Much more might be said concerning the tension between the Establishment Clause and the Free Exercise Clause, but for purposes of this project it should suffice to

inquiry, Wisconsin also argued that the parents' position was "one fostering 'ignorance' from which the child must be protected by the State."[35] Because "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence" and "education prepares individuals to be self-reliant and self-sufficient participants in society,"[36] Wisconsin argued, its system of compulsory education existed in part to protect children's interests against the influence or wishes of their parents.

B. The Holding

The Supreme Court, while accepting the claim that Wisconsin had a compelling interest in maintaining its system of compulsory education, held that requiring Amish children to attend two years of full-day schooling beyond eighth grade harmed the parents' legitimate religious interests more than permitting parents to withdraw their children harmed the state's legitimate interest in the children's schooling. In light of specific facts about Amish living, the Court held that what Wisconsin was mostly preventing was not ignorance but an upbringing that tended to produce precisely the self-reliance and self-sufficiency it claimed to so value. Crucially, three justices participated with the caveat that their concurrence hinged on the relatively slight difference between

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observe that, as of this writing, the Supreme Court continues to treat free *exercise* (as opposed to mere belief) as something that is in fact protected by the Free Exercise Clause.

[35] Ibid., 222.

[36] Ibid., 221.

an eighth grade education and a tenth grade education; had the case been about keeping children out of school altogether, it might have come out differently.[37]

C. A Sampling of Liberal Criticism

It would be quite impossible to consider even a noticeable fraction of the available commentary on *Yoder*, but a sampling of philosophical criticism should suffice to illustrate the difficulty that contractualism alleviates. Joel Feinberg—the same theorist who christened manifesto rights—in 1980 penned one frequently-cited critique to which Chapter 3 of this project will give additional attention. In one section of that piece, Feinberg makes a variety of complaints against *Yoder*, though he avers that he does "not wish to contend that the decision in *Yoder* was mistaken."[38] Rather, he suggests that while he is sympathetic, at least, to the reasoning of the concurrence, in general the Court ought not to be so quick to defer to parental discretion. This is because Feinberg thinks it would be ideal for the state to instead

> act to let *all* influences, or the largest and most random possible assortment of influences, work equally on the child, to open up all possibilities to him, without itself influencing him toward one or another of these. In that way, it can be hoped that the chief determining factor in the grown child's choice of a vocation and life style will be his own governing values, talents, and propensities.[39]

This is maximalism, not of outcomes but of a good Feinberg calls "opportunities"—Feinberg thinks that compulsory education should send children "out into the adult world

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[37] Ibid., 236, reads, "This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State."

[38] Feinberg, "The Child's Right to an Open Future," 136.

[39] Ibid.

with as many open opportunities as possible, thus maximizing [their] chances for self-fulfillment."[40] Or at least Feinberg *seems* to think this, at times; elsewhere his position appears more moderate. David Archard calls this an equivocation, then goes on to suggest that the maximalist version is "absurd." This is because children

> could not both learn enough to have a professional career in music and have the time for the intensive training that would be required should she want to be an Olympic sportswoman. . . . [furthermore] it seems evident that some life choices are morally unworthy—that of the career criminal, for instance—and not such that a child should be able to choose them.[41]

Robert Noggle raises similar concerns, though he also offers a moderate defense of opportunity maximalism as something to take "*in isolation*,"[42] apparently meaning that it is something that would characterize an ideal upbringing assuming, counterfactually, that there were no other considerations to weigh. Weighing and balancing is, Noggle thinks, precisely what the Court deciding *Yoder* was trying to do, and something many theorists fall back on in their own discussions of caregiving, namely

> balancing the parents' free exercise and other autonomy rights against the rights of the children (primarily their right to a decent education). Much of the commentary on *Yoder* seems to take this balancing model for granted, and simply quibbles about whether the courts got the balance right or balanced the right things . . . . But the balancing rights model is not confined to discussions of legal cases like *Yoder*.[43]

Noggle goes on to cite a handful of philosophers of childhood who rely, often implicitly, on the notion of striking some kind of balance between relevant interests in resolving

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[40] Ibid., 135.

[41] Archard, *Children: Rights and Childhood*, 76.

[42] Robert Noggle, "A Chip off the Old Block," 99.

[43] Ibid., 99–100.

questions of rights violation. In spite of ultimately rejecting what he calls the "balancing model," Noggle acknowledges it as "intuitively plausible."[44] What he doesn't do is delve any further into *why* it is so intuitively plausible, much less what exactly it is that theorists are or should be placing on the scales. But such "quibbles," as he labels them, are at the heart of understanding what *Yoder*—and, indeed, reasonable caregiving—is all about.

What Feinberg, Archard, and Noggle all seem to suffer alike is a profound ambivalence on the question of caregiver discretion. They acknowledge the importance and unavoidability of caregivers in shaping children's lives but also seem committed to the idea that caregiver discretion should be more constrained than *Yoder* appears to permit. Feinberg identifies his thinking as paradoxical, but resolvable through simple recognition that life is always messier than theory. Archard and Noggle treat the tension more dialectically, calling for moderation or modesty but providing little guidance on what moderation or modesty actually entails. All seem skeptical that there is any such thing as a caregiver's (i.e. parental) right to shape children's lives, but none takes the step of specifically claiming that *Yoder* was wrongly decided *because* it was decided in terms of caregivers' rights. The idea of "balance" seems to creep in repeatedly; Feinberg balances theory against practicality, Archard balances liberation against caretaking, and Noggle claims to reject balancing caregiver interests against children's interests but espouses a "moderate view of the child's right to an open future."[45] "Moderate," of course, is a synonym for "balanced."

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[44] Ibid., 100.

[45] Ibid., 111.

Something none of these theorists do in connection with their discussion of *Yoder* is first clearly establish what they mean by "rights." This goes a long way toward explaining their ambivalence. Particularly in Feinberg's case, his own notion of "manifesto rights" seems to be lurking in the background of many of his assertions, but Archard and Noggle inherit the problem. Identifying particular "rights" as unconditional and unalterable, then subjecting them to various kinds of balancing in response to theoretical or practical concerns, is *exactly backwards*. As noted in section 2 of this chapter, to subject something to a balancing test is to treat it as conditional and alterable. A contractualist approach avoids this ambivalence and clarifies the Court's reasoning by conducting the relevant inquiry in the proper order.

D. An Abbreviated Contractualist Analysis

The first thing Scanlon might suggest to Noggle is that it is not *rights* being balanced, but *interests*.[46] Furthermore, "the process involves a significant element of empirical calculation and institutional design: finding ways to redefine the rights in question so that they protect the relevant interests at feasible cost."[47] This suggests a very different approach than maximization, because maximization seems inevitably to produce principles for the general regulation of behavior that can be reasonably rejected. When Archard calls Feinberg's maximalism "absurd," he backs this characterization with

[46] See Scanlon, "Rights and Interests," 78. There Scanlon notes that "insofar as this process involves balancing, what are balanced are interests—in some but not all cases, interests that call for the protection of rights." Typically our interests bear some relation to our well-being, though not always—for example, on Scanlon's view, we have an interest in being treated fairly, even when being treated unfairly would not leave us worse-off. Scanlon, *What We Owe to Each Other*, 229.

[47] Scanlon, "Rights and Interests," 78.

hypothetical scenarios illustrating reasons to reject the principle on offer. When Noggle defends maximalism by appeal to something like (aspirational) ideal upbringing, he does so by *setting aside* all the reasons people have to reject maximalism, suggesting it should be considered "in isolation." But from the perspective of actual caregivers asking practical questions, "consider it in isolation" is surely no defense at all. What Noggle dismisses as quibbling is in fact the essential process of weighing and balancing interests in pursuit of the proper identification of relevant rights, so as to adopt principles for the general regulation of behavior that can't be reasonably rejected.

Consider a handful of principles from which the Court might have selected. One might be stated as "parents have plenary authority over their children's education." Certainly such a principle might be advocated by a strong proponent of parents' rights—a Lockean proprietarian, say, for whom something like child-ownership derives from self-ownership. Could anyone reasonably reject such a principle? The informal comparison of losses here contemplates, among other things, what parents stand to lose by being denied plenary authority over their children's education, and what children stand to lose by being treated as the property of their parents. In the United States of the late twentieth century, what parents stand to lose by being denied plenary authority over their children's education appears slight, especially if they retain *some* authority over their children's education instead—in other words, principles must be considered not only in light of relevant interests but also in light of relevant alternatives. While the children of loving and educated parents might very well have no complaints about a principle granting their parents plenary authority over their education, the children of parents who refuse to send

their children to school[48] or arrange for any alternative education would have good reason to reject such a principle. Such a child's important interest in, among other things, obtaining sufficient education to participate in their community would not be protected by this principle.

On the other hand, the Court might have ruled that "parents cannot interfere with the state-sanctioned process of education." But such a principle would cost parental interests dearly; it sweeps aside important parental interests in attending to their children's education and in transmitting their cultural values, and to whose gain? Children, too, may have reason to reject such a principle, given the strong likelihood that their parents are rather more likely to care about them than any state actor. There are presumably children, perhaps many children, who would benefit from a principle forbidding parental interference in their education. But the claim that "this principle would make someone's life better" does not, on its own, prevent its rejection as a rule for

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[48] The classic literary example, of course, being Mark Twain's Huck Finn, whose father disapproved of Huck's schooling:

> "Well, I'll learn her how to meddle. And looky here—you drop that school, you hear? I'll learn people to bring up a boy to put on airs over his own father and let on to be better'n what *he* is. You lemme catch you fooling around that school again, you hear? Your mother couldn't read, and she couldn't write, nuther, before she died. None of the family couldn't before *they* died. I can't; and here you're a-swelling yourself up like this. I ain't the man to stand it—you hear? Say, lemme hear you read."
>
> I took up a book and begun something about General Washington and the wars. When I'd read about a half a minute, he fetched the book a whack with his hand and knocked it across the house. He says:
>
> "It's so. You can do it. I had my doubts when you told me. Now looky here; you stop that putting on frills. I won't have it. I'll lay for you, my smarty; and if I catch you about that school I'll tan you good. First you know you'll get religion, too. I never see such a son."

Mark Twain, *Adventures of Huckleberry Finn*, chap. 5.

the general regulation of conduct. The costs to others must also be accounted for, and if they are unacceptable, then those others have reason to reject the rule. If forbidding parents from interfering in state-sanctioned education would substantially benefit one child, while merely inconveniencing others, and no relevant alternative principle was available, no one could reasonably reject the adoption of that principle. But if the cost to others were very high, or similar benefits could be achieved *without* so much as inconveniencing others, then the principle forbidding parental interference could be reasonably rejected.

So consider the principle, "parents may not act to prevent their children from acquiring sufficient education to participate in their community." Could anyone reasonably reject such a principle? Likely not; children definitely have an important interest in participating in their community. What cost might be imposed on parents by adopting this principle as a rule for the general regulation of conduct? This will depend on further details about their situation. In *Yoder*, the Court found that compulsory high school education would place too great a burden on the parents' interest in providing a religious upbringing, precisely because there was no evidence that the community lives of the Amish were hindered by missing out on two years of high school. In light of the concurring opinion, *Yoder* would likely have come out quite differently had the parents insisted on withdrawing children from school at an earlier age. Why the difference? Because, given the totality of the circumstances, an eighth grade education seemed sufficient. The primary education of the children seemed, to the Court, sufficiently important that *even if* parents raised a religious or other important objection, that objection would be outweighed. But two years of high school seemed both less important

an interest than primary education, and likely to impose a greater cost on other relevant interests.

Did the Court strike the right balance? Likely yes. Certainly the balance they struck is well-explained by Scanlon's contractualism, and not explained in a satisfactory way by competing approaches. Maximalist positions can't explain the outcome: at no point does the Court suggest that being withdrawn from school after the eighth grade constitutes the *best possible life* for Amish children, which is what upbringing idealism would require. A caregiving idealist might argue that it is in the child's *best interests* for parents to allow children to get a high school education—and indeed, if what they mean by "best interests" is "likely future income" or "self-reported life satisfaction" then there is probably some solid empirical support for their position. But maximizing principles that appeal to children's "best interests" can be reasonably rejected if there is any likelihood at all that one child's best interests will ever conflict with another child's best interests—something that does seem likely to occur, as an empirical matter. What can't be reasonably rejected is a rule requiring caregivers to provide children with, or at least not interfere in children's acquisition of, sufficient education to participate in their community. What counts as sufficient will depend on particular facts about the caregiver, the child, the world they inhabit, and the others who inhabit that world. Maximalist accounts are only sensible, if at all, in isolation from such confounders. Reasonable caregiving offers a reasonable alternative.

6. Conclusion

There are a variety of ways to think about upbringing. At least two of these represent slightly different approaches to upbringing maximalism—the view that there

should be no "missed opportunities" in a child's life, possibly given the constraint that they aren't owed the best possible caregivers. But it is not especially practical to hold the belief that any time a certain child's life could be made better, it *should* be made better. Caregivers must account for other considerations, often important considerations, in deciding how to raise their children. The relevant question, from a contractualist perspective, is approximately as follows:

- *Reasonable Caregiving:* What is permissible for this caregiver, given the totality of their circumstances, to do in connection with this child's upbringing?

The contractualist approach to permissibility incorporates into this question the idea that caregivers must account for the rights that people have—not their aspirations, but their important interests that can be protected "feasibly," or in other words, at an acceptable cost to other important interests. This means that caregivers must at least sometimes forgo opportunities to make a child's life go better. They should instead act according to principles they could not reasonably reject, that others also could not reasonably reject if they shared this aim. *Reasonable caregiving* refers to this application of Scanlon's contractualism to the role of caregiver. Scanlon's contractualism looks like a good way to think about upbringing in part because it captures the importance of balancing interests in the enterprise of caregiving, and in part because its normative basis is mirrored in the psychological experience of altricial parent-child relationships. The landmark case of *Wisconsin v. Yoder* helps illustrate the comparative shortcomings of maximalism in generating practical responses to caregiving concerns.

That said, Scanlon himself observes that although the values of parenthood both shape and are shaped by "what we owe to each other," "being a good . . . parent [also] involves understanding and responding to values that go beyond this central form of morality."[49] In particular, Scanlon claims that parents "have reason to want their children's lives to go as well as possible, taking into account all the various elements of well-being, and they may be open to moral criticism when they fail to promote this."[50] The phrase "as well as possible" looks, *prima facie*, sufficiently maximalist to raise a serious concern: is reasonable caregiving actually a *mis*application of Scanlon's contractualism? This is not a line of reasoning to which Scanlon gives any direct attention, however my observation that—

1. Caregivers should act in accordance with a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.
    a. This means, in part, that it is not permissible for caregivers to violate anyone's rights in pursuit of caregiving, because rights are constituted by principles that no one could reasonably reject.

—is, on Scanlon's contractualism, as true for anyone as it is for caregivers. So what can it mean to be "open to moral criticism" when selecting among alternatives that are, in terms of what we owe to each other, permissible? That is the subject of the next chapter.

[49] Scanlon, *What We Owe to Each Other,* 174.

[50] Ibid., 139.

CHAPTER 2

THE DOMAIN OF PARENTING

In spite of never, so far as I have been able to discover, having written an essay specifically concerning caregiving, T.M. Scanlon makes numerous claims, in *What We Owe to Each Other*, concerning the relationship between parents and children. Although these claims are almost always passing illustrations rather than carefully and substantively developed, they consistently suggest that by the time Scanlon wrote *What We Owe to Each Other*, he had come to view parenting (among other forms of beneficent relations, like friendship) as straddling the boundaries between "what we owe to each other" and morality more broadly construed. This was part of a shift in his thinking; in earlier formulations, Scanlon's contractualism was posited as a complete account of the nature of morality. But eventually Scanlon attended to the "fragmentation of the moral," amending that his contractualism is an account of the "domain of morality having to do with our duties to other people" or, in other words "what we owe to each other."[1] He now claims that this domain does *not* include all of morality, though it does encompass that portion of morality on which moral theorists have historically been focused. Then, with specific regard to caregiving, Scanlon claims that the values of parenthood both shape and are shaped by "what we owe to each other," such that "being a good . . . parent involves understanding and responding to values that go beyond this central form of morality."[2]

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[1] T.M. Scanlon, *What We Owe to Each Other*, 6–7.

[2] Ibid., 174.

So on Scanlon's view, what I have called "reasonable caregiving" cannot be completely understood by sole reference to "what we owe to each other." The morality of what we owe to each other identifies the boundary between permissible and impermissible activity, but identifying an action as permissible does not show it to be required, and does not show it to be the best available option. The morality of what we owe to each other rules out certain ways of treating our children, but there are many ways we can behave toward our children that appear to warrant criticism even when we are not doing anything impermissible. A theoretical ability to justify ourselves to others is not the only thing we value, and certain kinds of relationships depend on those relationships being valued in other ways—including behaving in ways that we can *actually* justify to others, in terms of reasons they are likely to accept. With specific regard to parents and children, it is true that

> obligations to one's children might be explained by the fact that they are particularly dependent on us for support and protection. . . . but [these obligations] do not seem to cover all that we expect of . . . parents. Moreover, even if they did, they do not have the right kind of motivational basis: we expect a good . . . parent to be moved by special concern, not just by a general sense of obligation. . . . [I]t is apparent that the values at stake . . . draw on sources of motivation that are distinct from the one that underlies the requirements of morality in the narrow sense, or "what we owe to each other." . . . [A] man who took good care of his children, because he recognized that he was responsible for their existence and that no one else would look after them if he did not, might still lack the motivation that a good father would have. . . . [B]eing a good . . . parent involves understanding and responding to values that go beyond ["what we owe to each other."][3]

Once those values are identified, Scanlon thinks, they "will be seen to have a structure

[3] Scanlon, *What We Owe to Each Other*, 172–174.

similar to that which most obviously characterizes our ideas of right and wrong,"[4] so it should still be adequate in characterizing reasonable caregiving to inquire after what it is that caregivers have decisive reason to do, all things considered. Here is the hurdle: Scanlon claims that parents "have reason to want their children's lives to go as well as possible, taking into account all the various elements of well-being, and . . . may be open to moral criticism when they fail to promote this."[5]

1. Is Scanlon a Caregiving Maximalist, or Not?

The idea that parents may be open to moral criticism for failing to promote a child's life going "as well as possible" looks, at first glance, like approximately the sort of maximalism to which reasonable caregiving was supposed to present a coherent alternative. Recall from Chapter 1 that maximalism refers to views positing an obligation for caregivers or others to provide "as much as possible" of something identified as good. One clear way for parents to be open to moral criticism for failing to promote a child's life going "as well as possible" would be for them to fail to live up to an obligation to maximize that child's welfare.

I see at least three possible responses to the apparent difficulty. The first would be to suspect that the discussion of "what we owe to each other" in Chapter 1 went wrong somewhere—that Scanlon himself thinks, once we've accounted for all the relevant interests and weighed them appropriately, caregivers in fact do owe a particular version of maximalism, namely, welfare maximalism, to their children. But while there is undoubtedly some risk of error in dealing with so comprehensive a theory as Scanlon's

[4] Ibid., 79.

[5] Ibid., 139.

contractualism, it seems unlikely that Scanlon is actually a maximalist. Writing of the value of human life generally, he raises the possibility that "recognizing the value of human life is a matter of respecting each human being as a locus of reasons, that is to say, recognizing the force of their reasons for wanting to live and wanting their lives to go better."[6] Then Scanlon rejects this view as, among other things, "impossibly unwieldy, since we cannot respond to or even contemplate all these reasons at once."[7] He claims that because we "cannot respond to all the reasons that every human creature has for wanting his or her life to go well . . . we must select among these reasons, and . . . do this in a way that recognizes the capacity of human beings, as rational creatures, to assess reasons and to govern their lives according to this assessment."[8] This acknowledgment that we can't possibly respond to *all* the reasons that every human has for wanting his or her life to go well captures the inevitability of missed opportunities, which—as noted in Chapter 1—is what maximalism is supposed to eliminate. Scanlon's identification of humans as rational creatures requires some finessing in connection with children, who are at least initially *not* rational creatures, but this will be addressed somewhat in both section 4 of this chapter, and Chapter 3 generally. For now it should suffice to observe that caregiving maximalism is unwieldy in the same way Scanlon thinks that responding to others as a locus of reasons is unwieldy, and that reasonable caregivers surely do "select among" reasons in non-maximizing ways—for example, when living up to their more general duty to not raise children in a way that violates someone's rights.

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[6] Ibid., 105.

[7] Ibid.

[8] Ibid., 106.

The second response would be to suspect that *Scanlon* has made a mistake. While I strongly favor a presumption of deference to Scanlon in those instances where he makes explicit claims about caregiving, it is surely *possible* that, in staving off some anticipated objection or illustrating an unrelated point about well-being, Scanlon misstated or overstated his position. Unlike many moral theorists, Scanlon writes relatively little about well-being, except when he is making arguments that it is not something that requires our attention, especially from a first-person perspective. But since he clearly identifies caregiving—specifically, parenting—as an exception to the general rule that notions of well-being are of limited value in understanding what it is that we have reason to do,[9] we are left with something of a puzzle. Scanlon is sometimes interpreted to claim that notions of well-being serve *no* practical purpose in moral inquiry,[10] and certainly he doubts it is possible to have a theory of well-being at all.[11] Even when he tries to

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[9] Other exceptions Scanlon mentions include being a friend, and being a spouse.

[10] "One immediately odd aspect of Scanlon's position that 'well-being' is an otiose notion in ethics is that he himself seems to have a view on what well-being is." Roger Crisp, "Well-Being."

[11] This doubt is expressed at various points in *What We Owe to Each Other*, but perhaps most clearly in this passage:

> [A] person's well-being is certainly increased if her life is improved in [various ways while] others are held constant. But this list of fixed points does not amount to a *theory* of well-being. Such a theory would go beyond this list by doing such things as . . . provide a more unified account of what well-being is, on the basis of which one could see why [various things] contributing to well-being in fact do so. It might also provide a clearer account of the boundary of the concept . . . . [and] provide a standard for making more exact comparisons of well-being—for deciding when, on balance, a person's well-being has been increased or decreased and by how much. I doubt that we are likely to find a theory of well-being of this kind.

Scanlon, *What We Owe to Each Other*, 125.

acknowledge *some* value, to "benefactors" alone, of having a notion of well-being, Scanlon concludes that "it is not clear how important the boundaries of well-being are, even from a benefactor's point of view."[12]

When Scanlon suggests that parents might be subject to moral criticism for failing to promote something like welfare maximalism, he's not only departing from conclusions about caregiving implied by his contractualism, he's doing so in a way that raises difficulties for his other arguments about well-being. This is in part because his primary criticism of the notion of well-being is that a first-person perspective on one's own well-being plays no role in deliberation about what one has reason to do. In order to show this, Scanlon argues not only that there is not any single notion of individual well-being that can fill all the roles philosophers assign to it, but that even a more practical, intuitive idea of well-being plays no role in first-person deliberation. When Scanlon notes that from other perspectives, especially the perspective of a benefactor, some notion of well-being is of "greater significance" derived from its "role in the moral structures" in which it figures,[13] it is not obvious how this distinguishes the benefactor's perspective from the first-person perspective. Just as a caregiver might sometimes wonder, "How can I increase my child's well-being?," when questions like "How can I make my child happy?" or "How can I help my child learn this important lesson?" might put their immediate concerns more clearly, surely individuals can and do ask themselves, "How can I cause my life to go as well as possible?"—even if putting the question that way is, as Scanlon claims, unnecessary or distorting. If this is right, then Scanlon's claim—that

[12] Ibid., 135.

[13] Ibid., 110.

parents may be open to moral criticism when they fail to promote their children's lives going as well as possible, taking into account all the elements of well-being—may reflect a failure to recognize that his criticism of well-being fully extends to third-person perspectives, in short, that caregivers are in no more need of a notion of children's well-being than are individuals in need of a notion of their own well-being. And since one could hardly be expected to maximize something of which one requires no notion, the contractualist critique of maximalism is preserved.[14]

There is another way to preserve the contractualist critique of maximalism while also maintaining deference to Scanlon in those instances where he makes explicit claims about caregiving. This is to focus, not on well-being or what it means to cause a child's life to go as well as possible, but on the nature of the moral criticism to which Scanlon suggests parents might be susceptible. Perhaps the moral criticism to which Scanlon thinks parents might be susceptible for failing to pursue something like maximalism does not arise from "what we owe to each other," but from a separate domain of morality. That might be taken to suggest that the present project should be limited to the domain of

[14] Scanlon may have another way out, depending on what it means to "promote" the project of causing a child's life to go "as well as possible." Maybe Scanlon would say that what he means is something like the following: "parents aren't under any particular obligation to actually cause their children's lives to go as well as possible, but they are under an obligation to make reasonable efforts to cause their children's lives to go as well as possible, taking into account all the various competing claims that must be balanced against any one child's well-being." This would preserve the importance of understanding well-being from the position of a benefactor, and would append a caveat to the phrase "as well as possible" that renders it non-maximizing, since the position would no longer be that children are owed as much of something as possible, but as much as possible *without violating various other obligations.* But even on this interpretation Scanlon has, at best, overstated his claim. I am comfortable with the term "possible" indicating either logical or physical possibility, but I do not think the term "possible" should ever be assumed to imply *moral permissibility* as well.

Scanlon's contractualism, setting aside all other domains of morality to strictly discuss how children should be raised *given* a caregiver's desire to be able to justify themselves to others on grounds those others could not reasonably reject. However the account ultimately yielded by such an approach would, on Scanlon's view, be an incomplete account of upbringing. Scanlon's work equips us to construct a more complete account, one that gives a clearer picture of at least some ways that the values of caregiving both shape and are shaped by "what we owe to each other."

2. The Value(s) of Parenting

Because Scanlon thinks that at least some moral domains beyond "what we owe to each other" arise from our having certain values, this more complete account begins with Scanlon's definition of value:

> To value something is to take oneself to have reasons for holding certain positive attitudes toward it and for acting in certain ways in regard to it. Exactly what these reasons are, and what actions and attitudes they support, will be different in different cases. They generally include, as a common core, reasons for admiring the thing and for respecting it, although "respecting" can involve quite different things in different cases. Often, valuing something involves seeing reasons to protect it . . . in other cases it involves reasons to be guided by the goals and standards that the value involves . . . in some cases both may be involved.[15]

Scanlon claims that "it is natural to say, and would be odd to deny, that I value my children."[16] Just so! But what is the content of this particular value? And how might it differ (if at all) from saying that I value children generally, or that I value caregiving? On this point Scanlon's account of value is difficult to follow, because his discussion of

[15] Ibid., 95.

[16] Ibid.

value is primarily targeted at showing that "value is not a purely teleological notion,"[17] which claim I accept. In the process, however, he distinguishes between valuing something and recognizing something as valuable; the former is a personal attitude, while the latter is a claim that the attributes of a thing "merit being valued generally."[18] So for example I value my children, and I value caregiving, but others have no reason to value my children any differently than they would value any other stranger's children, while others *do* have reason to value caregiving—even if they themselves are not and will never be caregivers. With regard to both my children and caregiving generally, understanding the value of each "is not just a matter of knowing *how valuable* it is, but rather a matter of knowing how to value it—knowing what kinds of actions and attitudes are called for."[19] Called for, presumably, by what it means to admire, respect, or protect the thing being valued.

Although someone who valued caregiving might thereby take himself to have reasons to do things that are involved in being a good caregiver,[20] someone who *values his children* will take himself to have all those same reasons, and many more besides. By contrast, a claim that caregiving is *valuable* is a claim that "others also have reason to value it."[21] What general reasons are there to value caregiving, without reference to our

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[17] Ibid., 96.

[18] Ibid., 95.

[19] Ibid., 99.

[20] Ibid., 88. What Scanlon actually asserts is that a "person who values friendship will take herself to have reasons, first and foremost, to do those things that are involved in being a good friend," but the pattern appears to apply to all special relationships.

[21] Ibid., 95.

own children? Or in other words, what properties does caregiving have that provide reasons for adopting certain behaviors and attitudes toward it? It is tempting to respond by pointing to the reasons we have to value such caregiving as kept us alive into adulthood, or to the reproduction of our own culture through the education of community youth, or to the economic benefits of our nation-state maintaining a certain birthrate. But it is quite possible to value the *results* of caregiving while believing, for example, that it would be better if we could bring these results about in some other way—decanting preprogrammed clones in vats, say, as vividly imagined in Aldous Huxley's *Brave New World*.

Rather, if we want to genuinely understand why caregiving specifically "is worth engaging in . . . we do better to consider why the questions it addresses are important and why it offers an appropriate way of trying to answer them than to focus on any particular results" that caregiving might produce.[22] And indeed, there are a number of reasons to value caregiving quite apart from any results it might produce. To begin with, infants need caregiving in order to live, to develop, and to flourish. For adults, the activity of caregiving establishes rewarding relationships and develops important human capacities. These are not necessarily reasons that everyone has, but they are considerations that count in favor of, for example, participating in family life.[23] They are reasons for people

[22] Most of what I am claiming here Scanlon claims about either friendship or science, rather than familial relations. In spite of his assertion that morality beyond the domain of "what we owe to each other" lacks a single manner of reasoning, there appears to at least be substantial overlap anyway, as Scanlon himself observes. Ibid., 94, 165.

[23] It might be objected that, since there are approaches to the advancement of procreation and caregiving that do not *require* (but admittedly may result in) traditional familial relationships—sperm donation, in vitro fertilization, womb surrogacy, orphanages, halfway houses, retirement homes—there is no reason to pursue participation in family

who do not have families to pursue practices that might secure such a life, and for people who do have families to protect their families and to be guided by relevant standards of behavior. They are reasons to favor public policies that seem likely to strengthen family bonds, and disfavor policies that tend to erode such bonds or obscure their nature and value, because those are the kinds of reasons we may take ourselves to have in recognizing that caregiving is valued and valuable.

By contrast, *as a caregiver* I value my children by taking myself to have personal reasons for certain attitudes and activities—reasons that others do not have. When Scanlon asserts that parents have reason to want their children's lives to go as well as possible, he makes that claim in contrast with a point about the concern we owe to others

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life unless that additionally happens to be one's preferred approach to procreation and caregiving. But it seems to me that the existence of alternatives to the advancement of procreation and caregiving serves primarily to emphasize the general value of the ordinary cases on which they are modeled. It would be very strange, for example, to describe routine deposits at a sperm bank as "trying to have children," or for a heterosexual couple with no biological fertility hurdles to give any consideration at all to IVF or surrogacy. Children living in orphanages, foster care, or adoptive families almost always evidence something having *gone wrong*, in terms of the life or fitness of their biological parents. And anyone who spends appreciable time in a retirement home will be heartbreakingly familiar with the refrain, "Why don't my children visit me?" It may not be the desire of all the senescent to die in their own bed, in their own house, attended by loved-ones, but it is undoubtedly an *ordinary* desire.

Of course, there is much reason to value the *availability* of alternative approaches to procreation and caregiving. The adoption of orphaned or abandoned children can be beneficial not only to children and communities, but also to adults who wish to raise children but, for whatever reason, cannot produce children on their own. Reproductive technologies expand procreative options and retirement homes extend some comfort to the elderly whose families cannot or will not provide. Pointing out, for no other reason than to point it out, that some particular person's life deviates from the ordinary case is rarely a helpful, necessary, or kind thing to do. But in the development of theory, the goal is not to assuage feelings of privation; in this case, the goal is to examine what people actually have reason to do. And there does not appear to be any reason for people to pursue alternative approaches to the advancement of procreation and caregiving when ordinary approaches are available to them—beyond a compassionate impulse to *also* provide alternatives to the deprived.

being more limited than that. The very general reasons I have for wanting other people's lives to go well overlap quite a lot with the reasons I have for valuing caregiving, insofar as I want other people's lives to go well even while they are children. So if Scanlon was speaking about children from a perspective of valuing caregiving generally, there would be no contrast to draw, and we might conclude that Scanlon had made a mistake, that well-being is ethically otiose even from the perspective of a benefactor, and so forth. But this is not, I think, the right interpretation. When Scanlon says that parents have reason to want their children's lives to go as well as possible, he's not making that claim from the perspective of someone who values children or caregiving *generally*, but from the perspective of someone who has reason to value a particular child in a certain way. One property children have that constitutes such reason is that they *belong* to their parents, not in a proprietarian sense (probably!) but in the sense that children do not spontaneously and acausally erupt into existence; they are beings for whom two actors are, in the ordinary course, *responsible*.[24]

[24] It might be asked why being causally responsible for bringing a child into existence gives me reason to personally value the child. But bringing a child into existence does not *give* me reason to personally value the child, it *is a reason* for me to personally value the child, in much the way that I value my body because it is *my* body. That a child is *my* child counts in favor of holding certain positive attitudes toward, and for acting in certain ways in regard to, that child. It must be granted that someone could claim that creating a baby is *not* a reason to value that baby, but I would have a genuine value disagreement with such a person; I could only respond that they apparently do not understand the value of having babies. Writing of music rather than babies, Scanlon suggests that one kind of values disagreement, perhaps the most interesting and important kind, "is about the attitude with which one should approach" certain things. In the case of a certain type of music,

> is it to be savored or contemplated in a serious and concentrated way, or taken more lightheartedly, even casually, as something diverting and amusing.
>
> These are only two among many possible answers, and different answers will be appropriate when different music is in question. A disagreement of this

Here, at last, we can discard the stilted and potentially misleading nomenclature of "caregiving." Stilted, because we do not naturally think in terms of children and caregivers but of children and *parents*; potentially misleading, because in fact there are a wide variety of caregiving arrangements and relationships, many of which will bear structural resemblance to parenting and even participate in the institution of the family, but none of which are the primary concern of this project. Parenting—as distinct from the relational fact of being a parent—is a kind of caregiving, valuable in the general way that all caregiving is. While the word "parent" can be understood in a variety of ways, what all these ways have in common is a measure of responsibility.[25] Scanlon identifies two

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> kind is not just a disagreement about the mood and outlook that are necessary in order to induce the kind of experience it is valuable to have but, rather, a disagreement about the attitudes one should have toward that experience itself. It would be very natural and appropriate for one person to say of someone else with whom he or she disagrees on this question that that person "does not understand the value of this kind of music." Having recordings of Beethoven's late quartets played in the elevators, hallways, and restrooms . . . for example, would show a failure to understand the value of music of this kind. What I am suggesting is not that this would show a lack of respect for this music, but rather that it shows a lack of understanding of what one should expect from it, and in what way it is worth attending to. The question of what music, if any, to play in such a setting may not be a weighty one. But it illustrates a point of more general importance: that understanding the value of something often involves not merely knowing that it is valuable or how valuable it is, but also how it is to be valued.

Scanlon, *What We Owe to Each Other*, 99–100.

I note in passing that, in the case of infants, there appear to me many reasons *beyond* causal responsibility to value children as one's own, with the assumption of custodial responsibility being perhaps the most obvious. More will be said about this shortly.

[25] Specifically, the word "parent" is also commonly used to identify any adult with primary responsibility for a child's life and existence, or *continued* life and existence, whether or not they brought that child into being. There is actually quite a lot of analytic literature on what makes someone a "parent," with particular attention paid to the kinds of edge cases that tend to drive contemporary moral discourse. Are "parents" the genetic contributors, gestational mothers, primary or secondary caregivers, or what?

ways to be responsible for something: attributive responsibility, which is a question of whether an actor is "properly subject to praise or blame for having acted in that way," and substantive responsibility, which is a claim that the actor "cannot complain of the burdens or obligations that result" because their responsibility arises "in large part from the importance, for agents themselves, of having their actions and what happens to them

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The events of contributing genetic material, gestating, and administering post-partum caregiving are all arguably ways of "parenting" that can be conducted by a variety of individuals, especially with the help of reproductive technologies. Elizabeth Brake and Joseph Millum identify at least four distinct accounts of "becoming parents" in the philosophical literature. They also identify the possibility of "a 'pluralist' account which allows that more than one of these relations (such as causation or intention) may be sufficient, but not necessary, for parenthood"—but aver that such accounts "have not yet been developed in depth." "Parenthood and Procreation," sec. 4.4.

In case it is not already clear, I think we should be pluralists about how one becomes the primary bearer of parental rights and responsibilities. Indeed it seems to me that most arguments about what "really" makes a person a parent foment more confusion than clarity. This is especially true when they get caught up in political or metaphysical wrangling over the meaning of sex or gender in connection with motherhood and fatherhood. Since I find, via Scanlon, that the best way to contemplate moral problems is through an informal comparison of losses, attempting to derive general rules from a litany of edge cases seems unlikely to yield clarity. Indeed, a preoccupation with edge cases could have a decidedly distorting impact on one's thinking about practical matters (perhaps especially, public policy). It seems to me that the word "parent" can intelligibly apply to anyone substantially responsible for either the creation or the upbringing of a child, and where finer detail is helpful or informative, the English language admits no paucity of descriptive qualifiers. Since being the biological parent of a child is good reason to be involved in their upbringing, in the ordinary case there is substantial identity overlap between what are sometimes distinguished as the "causal parents" and the "custodial parents" of any given child—the various people responsible for a child's existence, and the people responsible for a child's upbringing. But the act of assuming responsibility for a child is as surely a reason to be a good caregiver as having conceived that child in the first place, so adoptive parenting, step-parenting, and the like are practical arrangements that will not ordinarily present any special difficulties. In that sense my account of reasonable parenting may be the first "in-depth" development of a pluralist account of parenthood, insofar as contractualism is quite capable of accommodating any number of reasons a person might have both to subscribe to the values of parenting and to be recognized, by their community, as a parent. In those rare cases where complicated facts give rise to serious disputes, the appropriate response is to conduct an informal comparison of losses—not to contest the ontology of parenthood.

depend on and reflect their choices and other responses."[26] Children almost always result from the choices of one or both of their genetic parents, and so parents cannot in general complain of the burdens and obligations that result from engaging in plausibly procreative activities. This appears to be so even when adults take measures intended, but not guaranteed, to prevent pregnancy; only where one or both genetic parents have been coerced in some way might responsibility be denied, defeating the obligations that come with being a parent. Absent such circumstances, parents have reason to reject general rules for behavior that interfere with their fulfillment of parental obligations. Crucially, however, those obligations do not include maximalist caregiving, and such obligations are not even the right kind of motivational basis for a lot of what we ordinarily think of as "good parenting." But the reason parents have a responsibility to attend to their children's needs is *also* a reason that parents have to value their children in certain ways.

That is, the form of morality typically termed "parenting" goes beyond the obligations incurred by bringing others like ourselves into existence. Scanlon claims that a "man who took good care of his children, because he recognized that he was responsible for their existence and that no one else would look after them if he did not, might still lack the motivation that a good father would have"[27] because being a good parent involves being motivated in certain ways. One way that Scanlon, at least, thinks we *properly* value our own children is by seeing ourselves as having reason to promote our children's lives going as well as possible, which seems to me to reflect a commitment to some measure of welfare maximalism. It also seems to me that children are properly

[26] Scanlon, *What We Owe to Each Other*, 290.

[27] Ibid., 174.

valued by parents who see themselves not as maximalists but more modestly as having reason to ensure their children have *enough* of whatever it is that matters, but it is not essential to agree with Scanlon on this point for the contractualist critique of maximalism to be preserved. Parents can and do take themselves to have reason to maximize their children's well-being; the focus in family law on children's "best interests" seems like evidence that judges and legislators also take themselves to have such reasons. Now we can see clearly the error of documents like the United Nations Convention on the Rights of the Child (CRC): maximalism is a way of valuing one's own children that others have no reason to share. Not only do others lack corresponding responsibilities to e.g. protect and provide, they also lack any reason to value such children as their own. A maximalist conception of my own child's well-being might be something I should entertain, but while such a view might both influence and be influenced by what I owe to my children, others will in general have no reason to value my children in this way.

This also helps to explain why the error of documents like the CRC is so commonplace. If I value my children in a way that seems to demand welfare maximalism from me, and many other people value their children in a way that seems to demand welfare maximalism from them, then it might appear quite natural to suspect that what morality demands from all of us is a mutually reciprocal posture of welfare maximalism where all children are concerned. But no one involved in such a process actually values all children in this way; at minimum, to do so would require that we live in a world where the best interests of each individual child are fully compatible with the best interests of every other individual child. As an empirical matter, this is unlikely to ever be the case. Practically speaking, it would be very difficult for any parent with more than a single

child to maintain a convincing maximalism for long, given the extent to which parents must often divide their time and effort among children with varying and sometimes conflicting needs and wants. Nevertheless it is a common enough sentiment that I see no benefit in arguing for some "true" account of parental values (though I suspect a sufficientarian account would be superior). Rather, the takeaway is that while caregiving generally and parenting specifically are valuable, maximalism is not entailed by these general values. Maximalism does appear to be one common way for parents to value their own children, at least aspirationally, such that a maximalist might well consider e.g. sufficientarian parents to be subject to a kind of moral criticism—"you don't value your children properly!" But this explains why, when Scanlon says parents "may" be open to moral criticism when they fail to promote a maximization of their children's well-being, the "may" is very important. It points toward moral domains beyond "what we owe to each other," preserving the contractualist critique of maximalism without raising any difficulty for other things Scanlon says about parenting in connection with parents valuing children in certain specific ways.

3. Parental Priority

Recall that in Chapter 1, the upbringing question was interpreted as an inquiry after reasonable caregiving, revised in response to contractualist considerations as follows:

- *Reasonable Caregiving:* What is permissible for this caregiver, given the totality of their circumstances, to do in connection with this child's upbringing?

It was then shown from Scanlon's contractualism that

1. Caregivers should act in accordance with a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.
    a. This means, in part, that it is not permissible for caregivers to violate anyone's rights in pursuit of caregiving, because rights are constituted by principles that no one could reasonably reject.

This applies to anyone acting as a caregiver, whether to children or not—including, but not limited to, parents. But the kinds of reasons with which the upbringing question is specifically concerned are the kinds of reasons *parents* have, aside from any more general reasons they might have to want to be able to justify their actions to others (including their children). In fact parents have reason to make certain upbringing choices entirely apart from "what we owe to each other." Such reasons will be related to how they value their children. Given that people "simply *have* different reasons because of differences in their social circumstances, in what they are interested in, and in their aims and ends,"[28] it is unsurprising that different people value their children differently, such that even if some are welfare maximalists, some likely are not. All this suggests the following point about reasonable caregiving:

[28] Ibid., 71.

2. Parents are responsible for their children. Such responsibility is both reason to meet caregiving obligations and reason to value children in certain ways. But different parents will value their children differently, depending on various facts about themselves and their world.

As formulas for navigating the moral complexities of parenthood go, this is not one that seems likely to generate much in the way of detailed upbringing advice. Still it represents a substantial improvement over competing liberal accounts of upbringing. In particular, a common mistake in such accounts is the assumption, implicit or explicit, that there is something objectionable about valuing one's own children in ways that one does not value other people's children. For example, this will be discussed at greater length in Chapter 4, but theorists like Harry Brighouse and Adam Swift object to valuing one's children in ways that result in their having advantages over other children, on grounds that conferring advantages on one's children permits "unfair inequalities between those raised in different families" to arise.[29] Their explanation for why people should not value their children in such ways consists primarily in appeals to the value of equality. Brighouse & Swift never actually explain why they think the latter value trumps the former. Perhaps this is something they think egalitarianism entails?

More detailed discussion of the matter will be furnished in later chapters. Note for now that reasonable caregiving improves the discussion first by recognizing the dispute for what it is—a values conflict—then raising the question, "how should I proceed, when

[29] Harry Brighouse and Adam Swift, *Family Values*, 115.

disparate values come into apparent conflict?" Scanlon calls this "the problem of priority,"[30] and suggests a strategy:

> (1) . . . argue that insofar as these are things that people have reason to pursue and to value, these reasons will be among those that can make it reasonable to reject some principles. Therefore there will be pressure within the morality of right and wrong to make room for these values.
>
> (2) . . . there will of course be limits . . . [so] argue that when these limits are reached we have good reason to give priority to the demands of [what we owe to each other].
>
> a. This can be done in part by appealing to the great importance of justifiability to others and to the particular interests that moral principles protect,
> b. and in part by arguing that other values, properly understood, have a built-in sensitivity to the demands of [what we owe to each other].[31]

Scanlon then notes that approach (2)b is "particularly important" for cases in which "relations with other people are the central concern, such as the values of family life."[32] This is of course because properly valuing one's own children requires, in part, that one respect what they are: other people to whom we have reason to want to be able to justify ourselves.

This approach to priority explains the moral intuitions that differentiate between the ideal upbringing and ideal caregiving versions of maximalism. Suppose I have a daughter and take myself to have reason to promote her life going as well as possible. When I ask myself how I should raise her, I might initially think the question means something like this formulation from Chapter 1:

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[30] Scanlon, *What We Owe to Each Other*, 160.

[31] Ibid., numbering and lettering added.

[32] Ibid.

- *Ideal Upbringing:* What arrangements and experiences would result in the best possible life for this child?

Assuming I'm reasonably honest with myself, might I reflect on my own shortcomings and conclude that the first thing to do is ensure there is no one better to raise my daughter? If there is someone wealthier, kinder, or better-educated in want of a child, then persuading them to value my daughter as their own, assuming all related responsibilities, would be something to take as an aim.[33] But taking such an aim would be contrary to valuing my daughter as someone who I want to raise and have a certain kind of relationship with. So I might very naturally retreat to a more modest idealism:

- *Ideal Caregiving:* What arrangements and experiences would result in the best possible life for this child, short of terminating existing caregiving arrangements?

I think a sufficiently self-sacrificing parent of only one child might plausibly value that child in approximately this way. Such a parent would likely encounter the limits imposed

[33] It might be suggested that some parents do take this aim in placing their children with adoptive parents, but such cases, if they exist at all, are surely vanishingly rare. The decision to abdicate parental responsibility to others, in those cases where it *is* a decision rather than the unfortunate consequence of tragedy, appears to arise not from maximalism but from a combination of properly valuing one's child while recognizing one's inability to provide *adequate* upbringing anyway. In other words, it is not my position that placing a child for adoption reflects a failure to properly value the child, because there are surely circumstances in which a properly-valued child is best respected and protected by adoption. Rather, the fact that some other parent might be a *better* parent for a given child's welfare is not, by itself, sufficient reason to transfer parental responsibility.

by (2)a with regularity! In other words, it would be perfectly sensible for such a parent, whether or not they have any particular notion of well-being, to believe that properly valuing one's child requires one's commitment to promoting a child's life going as well as possible, but competing values—especially, "what we owe to each other"—will often interfere with that commitment. Parents of multiple children tend to learn that sometimes the needs and wants of one must take priority over the needs of wants of another, in ways that fail to promote their lives going as well as possible. Such parents encounter an internal rather than external values conflict, not between the values of parenting and the values of "what we owe to each other," but between their parenting commitment to promoting one child's life going as well as possible, and their parenting commitment to promoting the other child's life going as well as possible. This is because ideal caregiving, as I have characterized it, is distinct from reasonable caregiving in that it calls for an ideal judgment rather than an "all-things-considered" judgment. Of course we do not generally conclude that parents who prioritize the needs of (say) a sick child over those of a well child are therefore *bad parents*, for their failure to properly value the well child. Though it would also not surprise us if the well child were to receive some special attention or reward after the crisis had passed—sometimes the thing we have most reason to do in the moment is still, in some sense, regrettable,[34] and feeling we have reason to apologize for circumstance may also be a way of properly valuing our children.

[34] This is perhaps best articulated by Christopher W. Gowans in *Innocence Lost: An Examination of Inescapable Moral Wrongdoing*. Though it is beyond the scope of this project, a contractualist examination of Gowans' claims strikes me as a worthwhile undertaking for future projects.

So while parenting maximalism is plausible in certain limited circumstances, in practice it simply can't amount to much beyond the regret of feeling the pull of separate moral domains and only being able to respond adequately in the one that has priority. And while a parenting sufficientarian might judge a parenting maximalist to be "spoiling" her children, and the parenting maximalist might imagine the sufficientarian to be "depriving" his, both would be constrained in their expression of those values by the morality of right and wrong or "what we owe to each other." More commonly, parents from different societies will value their children in ways that might differ greatly, or scarcely at all, or anywhere in between. We will often have reason to attend to such differences.[35] But these are personal ways of valuing one's own children, rather than assertions about ways people should value children not their own—though of course the way we value our own children will influence the way we think they should be valued. The point is not that parents can't have any reason to maximize their own children's well-being, but that there is no general reason for *others* to maximize the well-being of children not their own.

4. Infants and Justification

This inquiry into parental values and how they interact with the separate moral domain of "what we owe to each other" has left at least one loose end: namely, biology. Most of what has been observed about parenting hews to the approach taken by Scanlon in his treatment of friendship: both are values in which moral domains beyond "what we owe to each other" are grounded, and both constitute motivational bases essential to

[35] Scanlon identifies at least three—personal edification, concern about emerging consensus that might affect us personally, and the possibility of divergence from community standards. See *What We Owe to Each Other* 74–75.

having certain kinds of relationships with others. In most passages where *What We Owe to Each Other* uses friendship to illustrate a point about value or reason or priority, Scanlon could as easily have used parenthood instead—and often he specifically notes that what he claims about friendship is also true of various other interpersonal attachments, especially familial ones.

There is an important empirical difference between friends and family, however: as the celebrated Atticus Finch taught his son, Jem, "you can choose your friends but you sho' can't choose your family, an' they're still kin to you no matter whether you acknowledge 'em or not, and it makes you look right silly when you don't."[36] Friendship is, to borrow the language of the social sciences, a cultural artifact; family, conceived in its most basic form as a network of consanguineous relations between parents who have children who in turn may become parents to children of their own, is for humans a biological fact.[37]

The difference seems important. To be someone's friend is a reason to value them in certain ways, including wanting to be able to justify one's actions to them in terms of reasons they are likely to accept. This appears to be what Scanlon is talking about when he refers to "other values," including friendship and parenting, having a "built-in sensitivity to the demands of right and wrong."[38] One of the ways we value our

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[36] Harper Lee, *To Kill A Mockingbird*, chap. 23.

[37] Like the word "parent," the word "family" is subject to some definitional wrangling. Since this section is concerned with the implications of *biology*, those debates are not especially relevant here.

[38] Scanlon, *What We Owe to Each Other*, 166. It might be asserted that this "built-in sensitivity" to what we owe to each other simply follows from the fact that the individuals involved in these relationships are human beings with interests. I think this

relationships is by wanting to be able to justify our actions to others, which process is central to the identification of right and wrong. But unlike the generalized, theoretical justification called for by "what we owe to each other," our ability to justify our actions to specific people with whom we enjoy relationships will depend in great measure on the kinds of reasons they are likely to actually accept, given their own values, circumstances, and so forth. In fact the process of entering into such relationships will involve behaving in ways we can justify to others within the context of some set of norms. Becoming friends with someone in the first place typically requires us to not behave toward them in objectionable ways, where "objectionable" will be primarily determined by personal preferences and community standards. Failure to maintain sufficient deference to these standards may be grounds for termination of the relationship. In extreme cases, this might even put us in a position where having an ability to enjoy relationships with others in our community will be incompatible with having an ability to behave according to the morality of right and wrong.[39] Since both the formation and maintenance of these

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would be mistaken, because it does not explain why the moral domain of friendship has a built-in sensitivity to what we owe to each other—only why the people who happen to be friends must also be concerned with what they owe to each other, which is something they should be concerned about even if they are not friends.

[39] Specifically, Scanlon writes, ibid. at 165, that

> the degree to which there is a conflict between the morality of right and wrong and the goods of personal relations depends greatly on the society in which one lives. . . . If everyone in my society sees the world as divided between 'them,' the outsiders to whom nothing is owed, and 'us,' who are bound by relations of blood, affection, and patronage, then I really am faced with a choice between actual ties with my fellow citizens—strong and warm, perhaps, if also fierce—and the requirements of morality, grounded in an ideal of relations with others that must remain purely ideal. I have tried to argue that we are not in fact faced with this choice, but it must be conceded that others could be.

relationships depends on justifiability, even though these relationships ultimately constitute domains of morality outside the domain of right and wrong, it looks like this is what Scanlon means when he refers to these relationships as having a built-in sensitivity to what we owe to each other.

But in the case of parents and children, the creation and maintenance of the relationship may not appear to require any justifiable behavior at all. At the level of biology, at least, parent-child relationships can come into existence regardless of whether they can be justified to the mother, father, or child, and are not relationships that can ever be terminated.[40] This raises two concerns about parenting that Scanlon had no cause to consider in connection with friendship or, indeed, any other relationship. First, unlike friendship or other kinds of relationships, it appears possible for a relationship between parent and child to come into existence quite independently of any practical interpersonal justification—outside the context of *any* set of norms. And second, infants cannot be described as being likely to accept *any* reasons. So it may not be obvious that we should agree with Scanlon that the values of parenting actually do have a "built-in sensitivity" to the demands of what we owe to each other, the way that other relationships (like friendship) do by virtue of owing their creation and continued existence, at least in part, to a context of interpersonal justification.

The first concern—that biological relationships can come into existence without any initial reference to interpersonal justification—is sufficiently complex that I can only

[40] Absent, I suppose, the application of causality-violating or transhumanist technological innovations. Note that this is different than the legal "termination" of parental rights or obligations, which often result in the assignment of new custodial parent(s) but of course cannot actually sever causal parenthood.

offer a partial response. While it is true that parent-child relationships, unlike other relationships, are not created in an interpersonal context between parent and child, it is also a biological fact that human individuals have *two* genetic parents.[41] Either or both of those parents might not have consented to the creation of the child; either or both might have taken active steps to *prevent* the creation of a child. But whatever way of valuing our children we might (or might not!) feel to arise from our biological connection with that child, there is always someone else with biological reason to value the child, whether or not they *actually* value the child properly: they have reason to value the child because it is *their* child. This is one way the values of parenting *do* have a built-in sensitivity to the demands of what we owe to each other: the relationship *between a child's parents* is not purely biological and does come into existence in the context of norms and community standards—even if, at times, in *violation* of those standards. For example, the relationships between a rapist and a woman he impregnates, or a man who uses a condom during intercourse and a woman who secretly uses that condom to inseminate herself,[42] occur in the context of norms and community standards that have been broken in ways

[41] The cutting edge of reproductive technology appears to be testing the boundaries of this claim, for example by inserting maternal DNA into third-party sperm for purposes of fertilization, or transplanting traditionally-fertilized blastocysts from one uterus to another for cross-womb gestation. But plausibly *increasing* the number of people arguably responsible for a child's existence, if anything, only strengthens the argument I am making here.

Still it must be acknowledged that modern reproductive technology may someday complicate this account of inter-parental justification, for example by allowing individuals to create children without ever interacting with any other human beings. My suspicion is that there will always be *someone* to whom a *truly* single parent, should such a person ever exist, will desire to justify her child-directed actions, but perhaps not. Satisfactory discussion of all such cases would presumably require individual attention to each.

[42] See, for example, testimony in State v. Frisard, 694 So. 2d 1032 (La. Ct. App. 1997).

that inform the parent-child relationship, for instance by (probably) depriving resultant children of any opportunity to be raised by both their biological parents. So it is not really accurate to say that the relationship between parent and child may come into existence outside the context of interpersonal justification, since the act of procreation will itself always occur within an interpersonal context between a male and female parent. This is true even if the male and female parent have never met; the context of sperm donation, for example, is governed by norms of justification as surely as any other interaction.[43]

The importance of the inter-parental relationship to the moral character of the parent-child relationship may not be obvious, especially for people who wish to argue, for whatever reason, against the idea of "family" consisting paradigmatically of fathers, mothers, and their children (with "extended" family tracing steps through additional generations). But my account actually *helps* to explain the unease we might feel when people try to draw moral distinctions between, for example, biological parents and adoptive ones, or between children who are "legitimately" versus "illegitimately" conceived. To the extent that the values of parenting *do* have a built-in sensitivity to the desire to be able to justify ourselves to others, the desire a father who properly values his children feels to justify his actions to the mother of his children is the same desire an

[43] One interesting recent example of this can be found in the case of Danielle Teuscher, who used a commercial DNA database to identify her daughter's biological father, in violation of the confidentiality agreement she'd signed with the sperm bank. As a result, she has been denied the use of additional sperm she was saving for creation of full biological siblings for her daughter. See "Woman Uses DNA Test, Finds Sperm Donor—and Pays a 'Devastating' Price," *CBS News* (31 Jan. 2019), https://www.cbsnews.com/news/woman-finds-sperm-donor-after-using-dna-test-raising-questions-about-donor-anonymity/. I will not undertake a thorough analysis of Teuscher's dilemma here, but I think her story illustrates the interpersonal context that exists even in cases of artificial reproductive technology, as well as some of the ways people do treat biological facts about parentage as reasons to act in various ways.

adoptive parent might feel toward a child's biological parents. Someone who *assumes* responsibility for a child he or she did not actually create will end up in approximately the same position, in terms of interpersonal justification, as a biological parent, so there is very little reason to treat them any differently.[44] Appropriately assuming responsibility for a child is as surely a reason to value that child as conceiving a child in the first place—as well as a great service to both the child and to biological parents with compelling reason to arrange for alternative custodial parenting. Insofar as adults who engage in potentially procreative activity might be thereby entering into a long-term relationship with each other (in the sense that they are the biological co-parents of another human, whether or not they wish to participate in the work of child-raising), adults have good reason to approach sexual relations with seriousness, care, and in the context of a long-term commitment to one another and any resultant children.

The second reason it might be doubted that parenting has "built-in sensitivity" to right and wrong is that behaving in ways we can justify to specific others requires an awareness of the kinds of reasons those others are likely to accept. But any desire or responsibility we might feel to be able to justify our actions to infants is swiftly defeated by the fact that they are, unless we take silence for consent, unlikely to accept any reasons we could possibly offer, on grounds that they are totally incapable of understanding us. Scanlon has two things to say about this. First:

> The beings in question here are ones who are born to us or to others to whom we are bound by the requirements of justifiability. This tie of birth gives us good reason to want to treat them "as human" despite their

[44] "Little" rather than "no" given the existence of certain obvious contexts like genetic counseling, where genetic parentage will remain, barring radical advancements in genetic engineering, inescapably relevant.

> limited capacities. Because of these limitations, the idea of justifiability to them must be understood counterfactually, in terms of what they could reasonably reject if they were able to understand such a question. This makes the idea of a trusteeship appropriate in their case . . . . It also indicates a basis on which such a trustee could object to proposed principles. . . . [T]hings that [children] are capable of benefiting from . . . will include, at least, protection and care, affection, and those enjoyments of which [they are] capable. So, while a large part of the morality of right and wrong, including rights and liberties that are important to us because of our interest in controlling and directing our own lives, may have no application in this case, other basic duties will have their usual force.[45]

It seems to me that pointing toward a "trusteeship" assumes too much, for reasons I will elaborate in Chapter 3, but we can understand counterfactual justifiability without that concept. In addition to being bound by the requirements of justifiability to their (other) biological parent(s), Scanlon thinks that because children are sufficiently "like us," in dealing with them we have reason to consider ourselves bound by at least some of the requirements of justifiability in spite of their incapacity. It is tempting to imagine that what obligates us is a sort of deferred reckoning, with our justifications being offered to the child's morally mature future self, but such a view is not, I think, the correct one. For one thing, some children will never become morally competent adults, sometimes for reasons that are known by parents well in advance. For another, many of the reasons the child might later have to complain about parental behavior will be unavailable to parents in the present, insofar as what those reasons actually will be depends, at least in part, on how the child is raised. For example, a child who was required to practice piano every day might come to resent it, or might grow to be quite glad of it. A parent with present reason to believe that the child will grow to be glad might later be sorry if the future turns out differently, but the fact remains that we can't properly act on reasons it would be

[45] Scanlon, *What We Owe to Each Other,* 185–186.

impossible, at present, to recognize. Instead, in considering what sorts of practices a child could reasonably reject *if* they were capable of understanding the question, parents need only account for their children's present interests—in, e.g., adequate protection and care, but also any present interest a child might have in certain kinds of futures.[46] Such future-oriented present interests are not, I think, coextensive with the reasons the child's future self might arguably have later, but this matter will be explored in greater detail later on, in Chapter 5.

The second thing Scanlon has to say about infant incapacity is related:

> I am not claiming that the desire to be able to justify one's actions to others on grounds they could not reasonably reject is universal or "natural." "Moral education" seems to me plausibly understood as a process of cultivating this desire and shaping it, largely by learning what justifications others are in fact willing to accept, by finding which ones you yourself find acceptable as you confront them from a variety of perspectives, and by appraising your own and others' acceptance or rejection of these justifications in the light of greater experience.[47]

There are reasons to perpetuate our species and our culture. Neither of these things can be accomplished by individuals unwilling or unable to co-exist with others. Some of our willingness to coexist with others may be natural, for example in the form of kinship attachments or sexual attraction, but a willingness to *be reasonable* is clearly far from universal. Learning to navigate the reasons people, including ourselves, have to reject

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[46] Stated a little differently, if parents fail to feasibly accommodate important interests they are presently warranted in believing their children will have in the future, they will be unable to justify their choices to the child's future self. But in the context of imagining children to be sufficiently "like us" that we are bound by the general requirements of justifiability, such a parent would also be unable to justify such a choice to the child's present self, provided the child were sufficiently rational. It seems to me that it is the present objection, rather than the future one, that matters.

[47] Scanlon, "Contractualism and Utilitarianism," 117.

principles for action is a process, something we must acquire in childhood and develop—and exercise—throughout our lives.[48] One way to properly value my own children is to see their moral incapacity as giving me reason to furnish them with a moral education. Stated more technically: if children were able to understand it, they could not reasonably reject a principle requiring their parents to provide them with a moral education of the kind described by Scanlon. This is so even if, as children, they do not enjoy their moral education; this is so even if, later on as adults, they determine that they do not wish to be governed by the requirements of justifiability and would rather not co-exist with the community of their upbringing or, for that matter, with anyone. Whatever else parents might have reason to do as a result of the ways in which they value their children, *all* parents have reason to promote their children's moral education—to help them grasp the justifications of action that they and others in their community are likely to accept or reject. The foregoing suggests an addition to reasonable caregiving:

2. Parents are responsible for their children. Such responsibility is both reason to meet certain caregiving obligations, and reason to value children in certain ways.

[48] I wonder, though I make no argument here, whether the root of some "moral panic" over emerging technologies might be a perceived threat to, in liberal terms, the fraternity presently required to achieve our reproductive aims. Technological innovation in both biological and cultural reproduction, from artificial insemination to the Internet, appear to automate the process of perpetuating species and community in ways that minimize co-existence and justifiability as practical prerequisites for propagation. There is a stereotype of transhumanist thinking that capitalizes on such objections by imagining a future where individuals inhabit digital worlds of our own design, attended by pleasure- or satisfaction-maximizing automatons that tile the universe with maximization infrastructure. A critique of literary transhumanist dystopias would well exceed the scope of this project, but the thought that "hell is other people" is one that people do sometimes entertain. Recent trends toward "loneliness" among tech-savvy urban adolescents and young adults strike me as very likely related.

But different parents will value their children differently, depending on various facts about themselves and their world.

a. Whatever else parents have reason to do, one way that "what we owe to each other" influences the domain of parenting is by obliging parents to furnish their children with a community-appropriate moral education, because a principle allowing parents to neglect such education could be reasonably rejected both by other parents and by affected children.

5. Conclusion

The foregoing equips us with a functioning account of what Scanlon's contractualism claims concerning reasonable caregiving—really, reasonable *parenting*. Along the way it was shown first that what might be interpreted as "maximalism" in Scanlon's account of parenting is actually a claim about the way (some) parents might value (or claim to value) their children, not a claim about what we owe to each other. This observation helped to clarify some intuitive concerns about the impracticality of various kinds of maximalism, in which what children are owed is as much as possible of some good or other. In fact the primary constraint on permissible parenting is not any kind of maximalism, but the priority of "what we owe to each other." While this is true of interpersonal values generally, the relationship between parents and children is biological in its origins and strongly characterized by infant incapacity, so "what we owe to each other" additionally gives parents reason to attend to the moral education of their children. This must be carried out in part by equipping them to grasp the justifications of action that they and others in their community are likely to accept or reject—since participation

in their community will require relationships that will depend in their formation on contextually justifiable behavior.

It should now be possible to offer clear criticism of competing accounts of upbringing, and ultimately say something useful concerning the relationship between parents and the state. But first I will take a brief detour to address a certain reformulation of the "best interests" commonplace: the identification of parents as "trustees" of children's rights or interests. This is not simply because Scanlon makes offhanded use of the reference, but because almost every theorist writing about children makes offhanded use of the reference—usually in ways that are, I think, liable to introduce unnecessary confusion to some of my later arguments.

CHAPTER 3

DO CHILDREN HAVE "RIGHTS-IN-TRUST?"

In his exploration of the "scope of morality," T.M. Scanlon argues that infants and young children belong to a class of beings we owe contractualist justifications, in spite of the fact that their limited capacities mean "the idea of justifiability to them must be understood counterfactually, in terms of what they could reasonably reject if they were able to understand such a question."[1] As further explanation, he suggests that "in deciding which principles could not reasonably be rejected we must take into account objections that could be raised by trustees representing"[2] such children. In Chapter 2 I suggested that understanding justification counterfactually does not appear to present any special difficulties. This is so at least in part because the contractualist view holds only that our actions should be justifiable in a way that "others could not reasonably reject *should they come to be*" moved by the desire for agreement on rules no one could reasonably reject.[3] Assuming that some of the people not yet moved by the desire for such agreement are *not* children, understanding the idea of justifiability "counterfactually" seems to be an ordinary feature of (much) contractualist reasoning, not due to incapacity but due to the failure or refusal of others to be moved by appropriate considerations. So it is not immediately clear what the idea of "trusteeship" is supposed to add or clarify in connection with justifiability to beings of limited capacity, as distinct

[1] T.M. Scanlon, *What We Owe to Each Other*, 185.

[2] Ibid., 183.

[3] Scanlon, "Contractualism and Utilitarianism," 111, emphasis added.

from beings who for some other reason are not presently moved by appropriate considerations.

Scanlon is not the only moral theorist who makes reference to the notion of trusteeship in connection with children's rights, interests, or capacities. Typically, philosophical discussions of trustees or fiduciary obligations arise in connection with some claim that the power one party has to do certain things can only be permissibly exercised to the benefit of certain parties. So "parents are like trustees" is an extremely common idea in contemporary upbringing debates, often made in reference or deference to Joel Feinberg's distinction between rights ordinarily attributed to adults ("*A*-rights") and those characteristic of children ("*C*-rights"). The most interesting "*C*-rights," according to Feinberg, are the "anticipatory autonomy rights" he characterizes as "rights-in-trust."[4] Some of the ways in which Feinberg's account of rights might prove confusing were addressed in Chapter 1, but nothing said there obviously precludes rights from being held "in trust." The problem, as it has elsewhere been remarked, is that the "idea of a trust is so familiar to us all that we never wonder at it. And yet surely we ought to wonder."[5]

What I will call the "trust model" of adults exercising stewardship over children "in trust" borrows the idea of trusteeship from common law jurisprudence so frequently[6]

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[4] Joel Feinberg, "The Child's Right to an Open Future,"125–126.

[5] Frederic William Maitland, "The Unincorporate Body," 272.

[6] For example, David Archard writes, in *Children: Rights and Childhood*, 72, that the "caretaker . . . chooses for the child in the person of the adult which the child is not yet but will eventually be. One way in which this line of thought has been expressed is by means of the notion of a 'trust.'" Harry Brighouse and Adam Swift also write, in *Family Values*, 53–54, that "the person holding and exercising . . . rights, as trustee or fiduciary, possesses them not because they promote her well-being but because her possessing them is instrumental to the well-being of the person for whom she is acting as fiduciary. Many

that its apparent meaning has been reduced to something like "controlled by one for the benefit of another." But this is neither a necessary nor a sufficient condition for the existence of a trust. This chapter explores the elements of trusts as they relate—or fail to relate—to children's rights, but it is important to be clear about the purpose of conducting that exploration. The idea of treating parents as trustees has *prima facie* appeal; to the extent that children—most obviously, infants—can be said to have rights at all, they are characteristically ignorant they possess such things, and have no particular power to act in connection with them. In ordinary cases, overcoming that ignorance and incapacity will require some amount of paternalism from caregivers. Parents are not in this pursuit generally considered to have plenary authority over children, even though they have, at least initially, plenary *control*. Intuitions that parents are obligated to wield that control to the child's benefit, and forbidden from wielding that control in furtherance of their own projects, bear clear analogy to the fiduciary duties of trustees, who are obligated to manage trusts to the advantage (and only, except incidentally, to the advantage) of identified beneficiaries. So the claim that children have "rights-in-trust" looks like a potentially helpful way of thinking about the relationship between parents and the rights or interests of their children.

At some point, however, it appears to have been recognized that the relationship between parents and children was sufficiently *unlike* a trust that scholars began to focus on arguments that parents are "fiduciaries" rather than trustees. This was presumably because the legal usage of "fiduciary" retains some relationship to trust law but has not in

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arguments for parents' rights see them this way."

living memory been *limited* to trust law.[7] The shift from writing about parents as trustees to writing about parents as fiduciaries appears to be ongoing.[8] Intellectual traffic between jurisprudence and moral theory may be counterproductive in this regard; the difference (assuming there properly is one) between moral and legal rights suggests that there may be an important differences between moral and legal *trusts*, but to the extent that trusts originated as instruments of equity rather than law,[9] even this is not as obvious as it might seem.[10] As a consequence of unstable usage, referring to parents as "fiduciaries" or

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[7] In fact non-trustees have arguably had "fiduciary" obligations—though not by that name—imposed at common law for almost as long as trusts have existed. See Seipp, "Trust and Fiduciary Duty in the Early Common Law," 1034–1036.

[8] For example, in support of the claim that a "number of commentators have also developed arguments as to the fiduciary nature of the parent-child relationship," Lionel Smith's recent "Parenthood is a Fiduciary Relationship," 2, cites to Connie K. Beck et al.'s less-recent "The Rights of Children: A Trust Model." While they certainly do argue that parents should be treated as having fiduciary obligations to their children, Beck et al. clearly use the term "fiduciary" with reference to full-fledged relationships of trust, not relationships that are merely trust-*like*. Then Smith argues that the defining characteristic of fiduciaries is *not* the existence of a trust, on which point he might very well be correct, but his essay goes on to make repeated reference to "trusts" and "trustees" anyway.

[9] The historic separation of courts of equity and courts of law, of course, is foundational to any understanding of jurisprudence in English-speaking nations—even though, in the United States today, most courts fill both roles. A complete and accurate explanation of the historic separation far exceeds the scope of this project. But an abbreviated account is that courts of law were charged with interpreting and enforcing the language of statutes generated by executive and legislative bodies, while courts of equity attended to issues of natural law, substantive justice, and similarly contentious matters where the lines between "moral" and "legal" often blur—perhaps, to the point of vanishing entirely.

[10] I have here in mind comments like one made by Scott Altman, in "Parental Control Rights," 217, to the effect that "reference to being a fiduciary need not be understood as a literal mirror for legal doctrines." But—why not? That is, yes, sometimes philosophical discourse borrows terminology from other disciplines or employs words in technical ways that differ in important respects from their ordinary usage, but at some point it becomes necessary to explain what it is that such usage is supposed to be importing (if anything), and why (only) these rather than other aspects of original usage. This is *especially* important for moral philosophers borrowing concepts from equity, since it is at

various of children's rights as "rights-in-trust" begs an important question about parenting, reinforcing without argument the unproven implication that children must be the sole or at least primary beneficiaries of the control caregivers wield over them. Referring to parents as "fiduciaries" *could* literally just mean that parents are obligated to prioritize the "best interests" of their children, even to their own detriment or the detriment of others, which conclusion I have spent the last two chapters of this project disputing. Or it could mean that parents hold children's rights "in trust." Or it could mean that parents have a special relationship of loyalty plus legal or factual control. Or it could mean something else entirely! So in the interest of promoting clarity, it seems to me that we should reject arguments that the relationship between parents and children definitely constitutes a "trust" or imposes "fiduciary" obligations, especially in some a narrow sense the reader might suspect has been selectively pruned to maximize its compatibility with a given author's personal intuitions about parenting.

That said, none of these criticisms actually show the trust model to be *mistaken*. Indeed I am myself uncertain. What I propose is to simply take the trust model of children's rights as seriously as possible, as a moral "mirror" of the legal doctrine of trusts. While this approach is unlikely to yield *certainty* on the matter, it should hopefully yield increased clarity—at minimum, on my concern that reference to parents as "fiduciaries" or "trustees" is substantially question-begging.

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least arguably the purpose of judicial equity to recognize something like "morality" in cases where the black-letter law is either silent, or would appear to work an injustice.

1. WHAT IS A TRUST?

To take the trust model of children's rights as seriously as possible, the first thing to get clear on is what constitutes a trust. Though some analogous practices existed in the ancient world,[11] contemporary trusts have their origins in the development of equity in medieval England:

> It all started with transfers of land made to the use of the transferor or of a third person. Such transfers began not long after the Norman Conquest and had become common before the fifteenth century. At first no legal problems were involved since the beneficiaries of the use had no legal remedies. They had to trust to the honor of the transferee [to handle the property as promised]. But early in the fifteenth century the chancellors began to enforce the claim of the beneficiary against the transferee. They held that he should be compelled in equity to do what conscience required him to do. They punished him for contempt if he refused to carry out the purposes for which the property was given to him. There was no remedy in the courts of law but there was now a remedy in equity.[12]

In courts of equity, the idea of a "trust" developed separately from property and contract law. Though analogy to both areas of jurisprudence is sometimes drawn, historically trusts became the vehicle *de jure* of social experimentation *in spite of* the laws of property and obligation as then constituted, notably in historic effect enabling married women to hold their own property long before the legislature saw fit to allow it.[13] Legislatures often find themselves in the position of specifically disallowing clever implementations of trust law, as when the profiteering behavior of American corporations

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[11] See generally David Johnston, *The Roman Law of Trusts,* discussing the Roman *fideicommissum*—an arrangement roughly analogous to contemporary testamentary trusts.

[12] Austin W. Scott, "The Importance of the Trust," 177.

[13] Maitland, "The Unincorporate Body," 278.

in 1890 inspired the Sherman Act[14]—the inception of *anti*trust law. The trend of social innovation through trust law continues; of particular significance to the present inquiry, it has in recent decades been argued that courts should formally adopt trust law as the operative rather than merely figurative model for recognition and enforcement of children's legal rights.[15]

In the United States today, the separation of law and equity has been largely done away—and given the contemporary tendency toward codification, the common law is not what it once was, either. But it continues to be true that arrangements of obligations are only properly trusts when they have certain features. These vary somewhat by jurisdiction, but in general there must exist

1) a grantor's or settlor's
    a. capacity and
    b. intent
2) to impose particular duties on a trustee
3) as concerning some identifiable trust property (corpus),
4) in order to fulfill the purpose of the trust
5) for the good of some identifiable beneficiary,
6) all subject to the demands of public policy.

[14] 15 U.S.C. §§ 1–7.

[15] For example, Beck et al., "The Rights of Children: A Trust Model."

So-called "trust-fund babies" make paradigmatic poster-children: a wealthy grandparent (settlor) gives possession and control of a sum of money (corpus) to a parent, guardian, attorney, or other responsible party (trustee) with instructions like "use this to cover schooling expenses" (purpose). There may be other instructions, including investment instructions or provisions for the trustee to be reimbursed for their management of the corpus—and those who benefit (beneficiaries) are sometimes the recipients of interest (i.e. income)[16] accumulated through wise trust management, rather than recipients of any portion of the corpus. In fact those identified as beneficiaries of trust income need not be the beneficiaries of the trust corpus when, or if, it is disbursed—at which point the trust terminates, which always occurs when the corpus no longer contains any property (or stated differently, when there is no corpus). Finally, the whole process must comport with public policy; there are a variety of ways for trusts to violate public interest, but some trust purposes that preclude enforcement in the United States are the promotion of bigotry and the restraint of marriage.[17] Note that failure to benefit the public is not construed as harm; trusts are not required to *benefit* the public, though many trusts do exist to promote public interests.

So the short answer to the question "what is a trust?" is "a trust is a collection of obligations and entitlements centered on the disposition of certain property." The finer details of trust creation, management, and enforcement can be set aside; it should be

[16] Most trust literature refers to trust income as interest, but in an effort to avoid confusion between the interests people have and the interest generated by a trust, I will favor "income."

[17] In other words, a trust benefit conditioned on *not* marrying, either a particular person or in general, will be granted as if the benefit had been extended without such a condition.

sufficient here to ask, "if children have rights-in-trust, who are the settlors, trustees, and beneficiaries? What is the corpus and what is the purpose of the trust?" Even assuming that the obvious interpretation of Feinberg's reference to "rights-in-trust" is to see children as the beneficiaries, with parents or guardians as trustees, the settlor is totally absent and the corpus and purpose, largely unspecified.[18] Who are the settlors, and what is their aim? What kind of income accumulates in a moral trust, if any? How much of the corpus is it permissible to expend in pursuit of the trust's purpose? Every answer given bears implications for other questions in the series, making it difficult to discuss any single element of children's moral trusts without addressing the trust in its entirety.

2. Are Children Alone Beneficiaries of Rights-in-Trust?

Nevertheless, the clearest element in the trust model of children's rights is *probably* the beneficiary, given that the motivating difficulty of Feinberg's account is the relationship between children, their rights, and the control certain adults exercise over those rights. The idea of "rights-in-trust," if it is to have any value, ought to explain something about why children should neither be abandoned to their own devices nor treated as property owned in fee, and perhaps also why adults are or are not morally blameworthy in their various interactions with their children's present and future circumstances. This places caregivers, not children, under plausibly fiduciary obligations, suggesting that children are indeed the appropriate beneficiaries in the trust model.

But we can, and often do, distinguish the rights or interests children have "in so far as they are children" from the rights or interests they have "in so far as they will

[18] In fact Feinberg himself attaches some relevant disclaimers to the idea of "rights-in-trust," however these disclaimers are not generally cited by others who discuss the "rights-in-trust" view.

develop into adults."[19] One way to approach that distinction might be to consider the difference between "income" beneficiaries and "remainder" beneficiaries in traditional trusts. An income beneficiary is one who receives regular payments from profits generated by the trust corpus, while a remainder beneficiary takes control of the corpus at the termination of the trust. On the trust model, children might be income beneficiaries in the present and remainder beneficiaries in the future, insofar as choices made on behalf of the child today impact the choices that will later be available to the child's adult self. Children are often different enough from their adult selves[20] that a conflict of interest may exist between the two; on the trust model, such a conflict would be the trustee's responsibility to mediate. For example, consider a child with a present interest in playing video games, whose parent believes the child's adult self will have an interest in having practiced piano instead. Suppose for purposes of discussion that the trustee is a parent,

[19] Archard, *Children: Rights and Childhood*, 62.

[20] It might be observed that a child's "adult self" is at least arguably the same self that was once a child, such that one's theory of personal identity will weigh heavily in interpretation of the corpus/remainder question. This seems like (another) good reason to be suspicious that the trust model is a helpful one. People have different interests over time, and sometimes our past does our present selves some disservice, such that we can imagine our present selves causing similar havoc for our future. This can be a useful motivational thought—I strive to do as many favors for my future self as I can. But for people who think there is no meaningful or morally relevant distinction between their child-self and their adult-self, I have no particular response; I find myself quite incapable of understanding such a perspective, insofar as it appears to posit no meaningful or morally relevant distinction between *child* and *adult*. For those who *do* perceive some distinction between child-self and adult-self, the precise contours of their theory of personal identity might incline them to one or another account of what a child's moral trust looks like, but it will not preclude the possibility of alternative models. And one way to put my criticism of the trust model is this: theorists frequently reference trusts or fiduciary obligations as if this were a way to *answer questions* about parental obligation, but in fact the trust model appears to be broadly compatible with *every* account of upbringing, depending only on how one chooses to characterize the particular elements of trusts or fiduciary obligations.

the purpose of the trust furnishes no particular guidance on the matter, and both the present interest in playing video games and the future interest in having instead practiced piano are legitimate "properties" in the corpus of the relevant trust. Is it permissible (or obligatory) for the parent to compel the child to practice piano?

Notice that the impossibility of ascertaining the future-adult's actual interests never enters consideration. A trustee's duty is not to act according to unknowable interests, but to preserve or possibly enlarge the corpus according to the trust's stated purpose, while balancing competing claims on the income and the remainder. A trustee's judgment about what is best for beneficiaries can be challenged, but in general it is enough that trustees have a reasonable belief that their choices satisfy the purposes of the trust for the benefit of the beneficiaries. So a parent could permissibly insist that the child practice piano rather than play video games based on that parent's (possibly mistaken) belief in the eventual value to the child of music training over video game prowess, but not based, for example, on that parent's desire to avoid the personal regret of paying for piano lessons for a child who doesn't practice.[21] In the latter case, it is the parent's benefit, not the present or future child's, being pursued; it would be a breach of trust or, in other words, a violation of the trustee's fiduciary obligation to use the trust for the benefit of the beneficiary, and not for their own benefit. Simply being *mistaken* about the

[21] I note in passing that while these reasons are reversible, I have never met a parent who required their children to play video games for a set amount of time each day in an effort to avoid the regret of purchasing video games their children never played. With the advent and growth of "eSports," in which professional video gamers showcase their skills and compete for cash prizes, will children of the future drill jungling and laning the way children today drill scales and arpeggios? While it is beyond the scope of this project, the idea seems sufficiently ridiculous that it almost certainly bears careful consideration at some future point.

interests the child's adult self will actually have does not constitute a breach of trust, in much the way that a bad investment would not, by that fact alone, constitute a breach of a traditional trust with a monetary corpus. Pursuing the *parent's* interests with no regard for the *child's* interests is what constitutes a breach.

One peculiarity of trust law, however, is that trustees are often beneficiaries themselves. Too great a unity of identity between trustee and beneficiary can collapse the trust, for to exclusively control and exclusively benefit from a piece of property constitutes simple ownership. But a common use of legal trusts is to spare one's heirs the cost and inconvenience of probate after one's death; this is accomplished by moving property into a trust of which one is the exclusive beneficiary until death, at which point the property is dispersed to the remainder beneficiaries (one's heirs). In other words, there is no reason in principle why the settlor of a child's "rights-in-trust" would be unable to specify any number of beneficiaries beyond the child and the child's adult self. Parents, siblings, church, state, really any entity could be an intended beneficiary, depending on how "rights-in-trust" originate. Notice, no matter how morally repugnant it might seem, that parents can and sometimes really do choose to have children for their own personal benefit, or the benefit of third-parties. A recent controversial example in medical practice is "savior siblings," children conceived for the explicit purpose of providing stem cells or organs to treat an older child's illness.[22] It may well be objectionable for parents to hold their children's rights in trust for the benefit of *someone*

[22] Some of the emotional challenges presented by such arrangements were popularized in Jodi Picoult's *My Sister's Keeper*, a few years after the situation was first medically described by Yuri Verlisnky et al. in "Preimplantation Diagnosis for Fanconi Anemia Combined With HLA Matching."

else, but this would have to be argued on other grounds; no feature of the trust model precludes it, for it is the settlor, not the beneficiary, who establishes both the corpus and the purpose of a trust.

3. Where Do Moral Trusts Come From?

"Settlor" is a term incorporating at least two roles: the creator of the trust, who establishes its purpose, and the grantor of the trust, who imparts the corpus. The creator of a trust usually *is* the grantor, but sometimes it is a court imposing some remedy in equity. As part of establishing the trust, the settlor also selects trustees and beneficiaries. On the trust model of children's rights, the identity of the settlor could reveal something about the nature of the corpus, and vice-versa. For example, in their argument for judicial adoption of trusts as the model for children's legal rights, Beck et al. suggest that although "the state [may play a] role as trustee, in its legislative functions it operates also as the settlor of the trust."[23] I do not wish to suggest that legal rights are or ought to be coextensive with those explicitly granted by the state, but Beck et al. are at least thinking in the right direction. If the corpus of children's legal "rights-in-trust" consists exclusively of legislatively-granted legal rights, then of course the legislature *is* the settlor, and the legislature's purposes in granting those rights is the purpose of the trust, binding the trustees (whoever they may be).

So who settles rights-holding trusts? The answer is unclear—and possibly something of a political question. For example, in a Platonic Republic, the mandatory separation of children from birth parents in furtherance of state interests paints a very clear purpose and method for those entrusted with the management of children's rights.

[23] Beck et al., "The Rights of Children: A Trust Model," 675–676.

However to the extent one believes moral rights exist against or prior to civil governments, the state could not be the settlor (at least, not the sole settlor) of a trust holding children's rights in the corpus. The state might still be the *creator* of that trust, where equity demanded such a thing, but the role of grantor would still need to be filled. In liberal societies especially, it seems unlikely that states will in the ordinary case be either the creators or grantors of children's rights-holding trusts.[24]

Other possible settlors might include abstract or incorporeal entities like nature or deity; it's not clear to me that much can be helpfully said of these. If we have indeed been endowed by a divine creator with certain unalienable rights, identifying the corpus and purpose of any resultant trust is going to be more a theological undertaking than a philosophical one. Maybe that's okay, but if we're going to assert that children's "rights-in-trust" are connected in some way with the nature or creation of children, might we simply treat children themselves as settlors? If we think that the simple fact of children having interests is itself what constitutes the corpus, maybe this is the right approach, but in connection with identifying trustees, treating children as the settlors of their own trust results in either infinite regress or final appeal to practicality instead of theory. If we think "rights-in-trust" are just an essential feature of live-born humans, children lack the competency to select their own trustees and so would need a trustee appointed to appoint

[24] One way the state might arguably be the creator of a trust even in the absence of a clear grantor would be for the corpus of moral trusts to be treated as a windfall or "found property," with the trust constructed to prevent something like unjust enrichment of the presumptive caregivers. But this would be extremely peculiar, given that presumptive caregivers do not generally *find* children, but *make* them, and in the ordinary case must devote substantial time and treasure to further developing those children before anything that might arguably be called an "unjust enrichment" could possibly occur—raising the thorny question of whether and to what extent such enrichment is actually unjust.

an appropriate trustee to appoint an appropriate trustee, *ad infinitum*—or, more practically, would be arbitrarily assigned trustees in the form of parents and/or the state.

If it is the child's nature that grounds the child's interests, then the settlor of the trust might instead be the creator of the child. Naturally, states cannot be said to *create* children any more than children can be said to create themselves—rather, parents are usually the creators of their children in a clear and not at all esoteric way.[25] Could they be settlors of a trust bearing their children's rights or interests? The idea that we receive our moral rights from our parents is undoubtedly peculiar, all the more so when it is realized how rarely some parents reflect on their children's rights *after* their children are born, much less prior to conception. Given that a settlor must have both the capacity and intent to create a trust, it would be difficult to maintain on the trust model that every procreative act meets the requisite criteria, even if some do. On the other hand, setting aside failure of intent, treating parents as settlors of their children's "rights-in-trust" does fit the pattern of many ordinary parenting practices. As observed in the previous section, sometimes parents create and even raise children for surprisingly specific reasons. Biological parents tend to select themselves as trustees, but placing children with relatives or for adoption looks like an act of selecting alternative trustees.

One way to address the apparent shortcomings of each candidate for settlor might be to simply think of them as joint settlors. This would require states and parents and perhaps also children and nature and God to all agree, however, not only on the purpose of the trust (the "best interests" of the child?) but also the identities of the beneficiaries

[25] But see Chapter 2, especially note 25, for discussion of other meanings of the word "parent." Naturally, the parents I have in mind here are causal parents, rather than custodial parents.

and trustees. This seems unlikely to occur. Is it instead a mistake to assume that each individual only has *one* trust relevant to the rights or interests of childhood? Do children have a trust containing their legal rights, established and managed separately from a trust containing their personal interests, with yet another for their moral rights, and so on? Resorting to a plurality of trusts complicates matters exponentially, such that any reference to children's "rights-in-trust" points in so many directions as to hopelessly tangle the inquiry.

4. Do Moral Trusts Have an Identifiable Trustee?

If we can't clearly identify the settlors of children's moral trusts, and are even a little fuzzy on the identity of appropriate beneficiaries, useful assertions concerning the corpus, purpose, or identity of trustees will need to be grounded in something beyond the trust model alone. It might seem obvious to some that parents should fill the role of trustees, with children as beneficiaries and the corpus of their trust a right to an "open future," but it will seem equally obvious to others that the state fills the role of trustee, with the community as well as the child filling the role of beneficiary, all the child's rights forming the corpus. Such a communitarian attitude would be no less accurately labeled a "rights-in-trust" view of childhood than the one advanced by Feinberg, even though it might constitute a rejection of everything else Feinberg claims about children's rights.

Perhaps this is why writing on children's rights has tended in recent years to emphasize fiduciary duties rather than trustee obligations. What many contemporary theories of upbringing appear to assert is that adult caregivers have a special obligation to use their control over children's development, lives, and choices for the benefit of those

children, with benefits accruing to others, if at all, only incidentally.[26] The trust model of children's rights can support such assertions because trustees have fiduciary obligations by virtue of their position in equity—but those fiduciary obligations arise from the relationship between the settlor and the trustee concerning the corpus, *not* from the relationship between the trustee and the beneficiaries. In fact beneficiaries generally have *no* enforceable interest in the trust corpus until after a trust has been settled. An account of children's rights that uses selected portions of the trust model to describe the relationship between the trustee and the beneficiary, excluding troublesome questions concerning the identity of the settlor, requires some other justification for the fiduciary nature of that relationship. But referring to parental obligations as fiduciary *without* resort to the trust model requires the same thing; "fiduciary" *describes* the relationship, but what is the justification for describing the relationship in that way? In order to maintain that adults have a special obligation to use their control over children for the benefit of those children, some other argument must be provided.[27] Otherwise, fiduciary

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[26] In particular, I am thinking here of Brighouse & Swift, who assert that parents rights, whatever they are, must be identified "entirely by consideration of children's interests." *Family Values*, 121.

[27] One way this has been done in legal scholarship is to discuss various fiduciary relationships already recognized at law, look at the obligations imposed on parents by the law, then identify all the analogies and explain any apparent disparities. This is approximately the approach of Lionel Smith, for example, in "Parenthood is a Fiduciary Relationship." The problem is that this does not explain why parents *should* be held to fiduciary standards—only that they apparently, often, *are*.

Another approach, this one from philosophy, is to argue that parental rights are all and only grounded in parental obligations. The account of rights advanced by Scanlon and adopted in Chapter 1 of this project is naturally incompatible with such claims, however, as parents may have important interests in upbringing that are not derived from anything they owe to their children.

obligations are simply smuggled into accounts of children's rights by way of linguistic convention.

Rather than cling to the idea of parents as fiduciaries even as the trust model falls apart, perhaps we should prefer accounts of children's rights that do not assert "rights-in-trust" or anything like them. A children's liberationist who believes that no one should exercise control over children, for example, will certainly need no justification for trusteeship; such a theory would naturally assert that no such justification exists. Opposite liberationists there are proprietarian accounts of childhood asserting something like ownership of one's children in fee; because any successful proprietarian account *ipso facto* justifies total control over one's children, the lesser power of trusteeship need not be established.

However I find both liberationist and proprietarian accounts unpersuasive because children and parents both have strong reasons to reject such arrangements; it seems to me that children have special claim on their parents, such that both liberationist and proprietarian views would deprive children of something they are owed. The trust model of children's rights occupies a rough continuum between the liberationist and proprietarian positions, positing an inverse relationship between a child's capacity for self-determination and the extent of parental authority. Like the trust model itself, this continuum has intuitive appeal: the more capable a child grows, the less appropriate it seems for parents to exert control. The central puzzle is why and how adults ought to *pursue* capability growth and the accompanying diminishment of power—what it is that justifies an adult's fiduciary relationship absent a clear settlor of a child's moral trust. The fact of a child's incapacity and expected maturation seems to explain why it is in

their interest to *have* a fiduciary, possibly even why it would be best for parents to fill the caregiving role, but it does not seem to justify the imposition of *fiduciary* responsibilities on any particular person, and *that* is the kind of justification needed to identify a specific "trustee" over a child's "rights-in-trust" absent some clear settlor making a direct appointment.

It might be observed that a possible justification can be found in a *duty to rescue*. At common law, where the trust model originates, there is no general duty to rescue; if I see someone drowning in a pond, I am under no legal obligation to intervene. But if the person in the pond is there because I pushed them—if I am responsible for their peril—then a duty to rescue does arise. My responsibility for their circumstances obligates me to act in their best interests, and if I do not, then I am liable for such harm as may befall them. Because human infants are altricial, they are in a more or less perpetual state of peril from the instant of birth until several years into their upbringing. At minimum, they will actually starve to death if food is not placed directly into their mouths. People who procreate are directly responsible for this peril. The only rescue possible is to attend to a child's upbringing, either by seeing to it oneself or persuading someone else to assume the burden.[28]

Doubtless some will find this a peculiar justification for the identification of biological parents as the trustees (at least initially) of a child's moral trust. David Archard suggests it is a "strange idea that the irreducible brute fact of procreation 'creates' moral rights and duties," adding that while "it is not too odd to think of a created duty to care

[28] Notice that this parallels the duties procreators were observed in Chapter 2 to have to their children under the auspices of what we owe to each other—and seems similarly inadequate, given any understanding of the values of parenting.

for what one has brought into being, it is mysterious how this same event generates a right to rear."[29] But if we add upbringing-as-rescue to the trust model of children's rights, the mystery abates. What Archard identifies as a "right to rear" just picks out those powers it is both necessary and feasible for parents to wield if they are to fulfill their obligation to rescue their child from his or her own incapacity. Since the trust model is itself derived from the common law, perhaps the duty to rescue should also be brought along.

This approach to justifying the imposition of a fiduciary relationship between certain specific adults and certain specific children raises at least three further issues, two of which I will mostly set aside. The first is that the common law duty to rescue is sometimes regarded as inappropriately constrained; it seems to be a matter of general agreement that even if I lack a legal duty to rescue a drowning stranger, I have a *moral* duty to rescue a drowning stranger, provided I can do so with a reasonable expectation of safety to myself. So it is entirely possible that there may be a surprisingly large number of people with some moral obligation to see to any given child's upbringing-as-rescue, even though they are not at all responsible for the child's peril. Might this justify some community (or state) interest in upbringing? This, too, seems plausible on the trust model, though for purposes of this project, it is sufficient that we have identified even one adult—much less two—on whom it is justified to impose a fiduciary duty to see to a child's interests, at least at infancy.

The second is that a "duty to rescue" could be quite a lot more extensive than it initially appears, depending on what one is willing to count as "peril." Rescuing a child

[29] Archard, *Children: Rights and Childhood*, 165.

from the peril of being a helpless infant mostly requires a few years' worth of food and shelter, but imparting other potentially life-preserving skills, like reading or swimming, might also be characterized as a rescue of sorts. How far does this reach? Might parents also have an obligation to address perils arising from social circumstance, for example by enrolling children in self-defense classes or teaching them how to read social cues and be alert for danger? What other perils might parents be said to place their children in by creating them, and what is the threshold of care at which we can say those children have been adequately "rescued?" Could the "peril" into which children are born be the peril of not developing into a certain kind of person—a "complete" or "mature" human, say? If so, sufficient parenting might be rather extensive; on such a view, upbringing-as-rescue could obligate parents quite heavily.

5. The Purpose and Corpus of a Moral Trust

The third issue is that, whatever fiduciary duties upbringing-as-rescue might impose, they will be limited to the domain of "what we owe to each other." That is—upbringing-as-rescue does not appear to derive its force from the values of parenting, but from the values of right and wrong. Even if the rescue responsibilities of parents are quite extensive, they are unlikely to include the provision of piano lessons, video games, higher education, or inheritances. Nearly no one is out there arguing in favor of infanticide,[30] but if a parent's fiduciary or trustee obligations arise from something like a duty to rescue,

[30] But see Alberto Giubilini & Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?" Recent developments in American politics, especially in connection with the disposition of infants born alive after failed abortion attempts, are beyond the present scope. But I observe that arguments against legalized abortion on grounds that it normalizes infanticide are sometimes identified as informally fallacious "slippery slope" arguments. In the United States circa 2019, we appear to be approaching the bottom of that particular slope.

what can be said about the values of parenting and the many ways parents shape children's lives beyond anything ostensibly associated with "peril?" To this point I have left as open as I could the question of what it is, precisely, that adults exercising control over children's lives are controlling. In a legal trust, what the trustee controls is the corpus—typically some real property, a sum of money, shares of a company, or arguably "any transferable interest, vested or contingent, legal or equitable, real or personal, tangible or intangible."[31] What adults control when they handle an infant is essentially everything—where the child travels, what the child eats and sees and hears, when and how the child does these things. Some of this is essential to keeping the child alive, but much of it is incidental to that task; keeping an infant fed or a toddler sheltered requires quite a lot of effort and attention that is difficult to provide without also determining much about the child's environment, which in turn affects much about how the child's future interests will develop. We might well wonder whether the control exercised over a child based on fiduciary obligations to preserve the child's life generates further fiduciary obligations relating to the child's well-being, that is, to ensuring as far as possible that the child's life *goes well*.

Certainly many parents *feel* thusly obligated, to various degrees. But fiduciary control over a corpus is granted for some *purpose*, and that purpose—not other purposes for which the corpus might be used, or secondary effects use of the corpus might have—is what binds fiduciaries in equity. In the absence of a clear settlor, identifying something like a duty to rescue as the source of parental rights and obligations also suggests that

[31] George Bogert & George Bogert, *Handbook of the Law of Trusts* § 25 at 69 (5th ed. 1973), quoted in Beck et al., "The Rights of Children: A Trust Model," 672, n. 24.

parental obligations could be quite minimal, even though the corpus with which they are entrusted might be managed to achieve a great many ends beyond a minimum standard of living. Of course it is quite permissible to manage a trust *really well,* achieving gains beyond the expectations of either the settlor or the beneficiaries! But it is not excellence to which trustees are obligated; mere competence in satisfaction of the trust's purposes is quite sufficient. Does this obligate parents too lightly? On one hand, children can and do live through physical beatings, and worse. Surely parents are obligated against administering physical abuse? On the other, children surely have a great many interests the denial of which does not constitute peril into which their parents have placed them by virtue of conception.

On the rescue model, then, the obligations owed to children by the "trustees" or "fiduciaries" controlling their autonomy are not established by the values of parenting. I'm clearly wrong about this if God gives children to parents for some identifiable reason, or even if the purpose of a child's life is genuinely established by state interests or parental reasons for deliberate procreation. A trust with a clearly-settled purpose reveals much about trustee obligations and the identities and entitlements of beneficiaries. Asserting fiduciary obligations to preserve, enlarge, or maximize children's well-being or future opportunities in the absence of a clearly-settled purpose, based on the brute fact of adult control over infant autonomy, simply assumes too much. That a child *has* some interest, present or future, is not any reason to claim that parents have fiduciary obligations to their children. Parents' fiduciary duty to keep their children alive, justifying plenary-but-waning control over children's autonomy, does not entail other fiduciary duties over how well their children's lives go. The trust model can only impose

obligations as clear as its purpose; if no clearer purpose than upbringing-as-rescue can be established, then actions that do not endanger the child's life but may or may not cause the child's life to go well appear simply to be permissible.

6. Conclusion

There is a way of talking about children's rights that goes something like this: children are highly suggestible incompetents. They have an important but inchoate interest in self-determination; until that interest vests, what's best for them is preservation or expansion of that inchoate interest. So far, the most effective approach to success in such endeavors appears to be allowing certain interested parties to more or less control children's lives until they are no longer children. Owing to children's suggestibility, however, placing them under the control of others seems detrimental to the aforementioned, albeit inchoate, interest in self-determination. For those who find liberationism an unpersuasive account of children's rights, the apparent inconsistency might be alleviated if adult power over children is limited to that of a fiduciary, with control not of the child simpliciter but of the child's rights, interests, autonomy, or future self "in trust" (or something trust-like). The problem with the "caretaker's thesis," as David Archard labels it, is that it "argues against the liberationist for a denial of self-determination but, in the last analysis, is unclear how much should be denied and what precise ends are served by the denial."[32]

What this chapter has illustrated is that the trust model of children's rights, while descriptively appealing, can smuggle in a substantive claim. The substantive claim is that caregivers have fiduciary obligations concerning children's rights, interests, or similar. In

[32] Archard, *Children: Rights and Childhood*, 79.

the absence of a clear settlor or purpose (Archard's "precise ends") the trust model does not actually show that caregivers have any fiduciary obligations to children beyond, perhaps, some duty to rescue their children from the perils to which they were subjected by birth. Because it certainly *seems* as though parents have a great many obligations concerning their children's well-being, the mistake is an easy one to make, all the more so if one's theory needs some way to reconcile autonomy as an overriding interest with the observable fact that responsible parenting involves a great deal of paternalistic intervention in children's lives. None of this shows the trust model to be correct, nor yet incorrect, but it does suggest caution where an assertion of trust or fiduciary obligation is used to explain parental duties that have not been specifically grounded in some other way (or grounded in other claims about parental duties that are not themselves, in turn, grounded). One way to ground such obligations while maintaining the trust model would be to identify a clear settlor or purpose of a child's moral trust, but finding such a thing may require us to answer no less comprehensive a question than "what is the purpose of (this child's/person's) life?"

Fortunately, there are other ways to ground obligations. There is also substantial room for analysis of caregiving in the absence of fiduciary obligations, by focusing on the meaning of *rights* instead of asserting the existence of a trust or something trust-like—in other words, by appealing to contractualism and the values of parenting. For example, it might seem strange to say that parents on the upbringing-as-rescue view have no fiduciary obligation against beating their children, but it wouldn't be a claim that adults have *no* obligation against beating their children; I expect I am quite obligated to refrain from beating *anyone,* never mind whether we enjoy a special relationship of trust.

It might be objected that the relationship I have developed with my children, by virtue of stewardship over their "rights-in-trust," gives me *extra* or *special* reason to refrain from beating them, and this seems intuitively true, but in such a case it is not my identifiably fiduciary duty to refrain from beating my children. Beating my children is just something I have decisive reasons to refrain from doing. If we model parent-child relationships in terms of what we have reason to do, or to refrain from doing, rather than in terms of trusteeship or fiduciary obligation, I think we will be able to say much, and more clearly, about what it is that really constitutes appropriate caregiving. In other words: the values of "what we owe to each other," combined with the values of parenting, are sufficient to address the rights and obligations of parents and children, without reference to legalisms like trusts or fiduciary relationships. In some contexts, these notions might be helpful or illustrative, but the question of whether children have rights-in-trust, if we insist on asking it that way, can only really be answered after it is *first* determined what specific parents in specific circumstances actually have reason to do.

CHAPTER 4

EQUALITY AND SUFFICIENCY IN UPBRINGING

Contemporary criticism of the institution of the family commonly manifests as complaints that family relationships foment inequality and/or diminish autonomy. Probably the best-known examples are those addressing the equality and autonomy of women under a putatively "patriarchal" social order, but Western feminism's century-plus of sweeping cultural victories has, predictably, attracted imitation in other areas of advocacy. This is sometimes even explicit: in their influential and controversial account of parent-child relationships, *Family Values*, Harry Brighouse and Adam Swift observe that they are "happy to think of [their] theory as doing for children what feminist philosophers have done for women. Where feminists reject patriarchy, [Brighouse & Swift] reject 'parentarchy.'"[1] To this end Brighouse & Swift indeed complain that parent-child relationships, at least as they tend to take shape in Western liberal democratic post-Enlightenment societies, foment inequality and diminish autonomy.

Autonomy is the subject of the next chapter; this chapter addresses the matter of equality as it relates to upbringing, with particular attention to the view of Brighouse & Swift that "parents are currently allowed to do too much for their children, and in too many ways."[2] This is something of a promising start; on its face, the assertion that "parents are currently allowed to do too much for their children" certainly *looks* like a

[1] Harry Brighouse and Adam Swift, *Family Values: The Ethics of Parent-Child Relationships*, 26.

[2] Ibid., 30–31.

rejection of caregiving maximalism (at least for parents), since it would be difficult to do "too much" for a child, in connection with securing any particular good, while under an obligation to secure "as much as possible" of it. Nevertheless, at publication Brighouse & Swift's account became the subject of rather more media attention than is ordinarily afforded to academic philosophy. The headlines were, as headlines are wont to be, breathless:

"Professor: If You Read To Your Kids, You're 'Unfairly Disadvantaging' Others"[3]

"Bedtime Stories 'Allowed,' but Not Church or Private School:
Prof Re-engineers Family for Egalitarian Utopia"[4]

"Check Your Bedtime Story Privilege at the Door"[5]

"Should We Ban Bedtime Reading to Children or Simply Ban Families?"[6]

The actual claims that incensed so many commentators are arguably less exciting—but, depending on how one interprets Brighouse & Swift (or values one's

[3] Katherine Timpf, "Professor: If You Read To Your Kids, You're 'Unfairly Disadvantaging' Others," *National Review* (6 May 2015), https://www.nationalreview.com/2015/05/professor-if-you-read-your-kids-youre-unfairly-disadvantaging-others-katherine-timpf/.

[4] Steve Weatherbe, "Bedtime Stories 'Allowed,' but Not Church or Private School: Prof Re-engineers Family for Egalitarian Utopia," *LifeSite* (7 May 2015), https://www.lifesitenews.com/opinion/bedtime-stories-allowed-but-no-church-or-private-school-in-british-profs-so.

[5] Neal Larson Kid, "Check Your Bedtime Story Privilege at the Door," *Magic Valley* (12 May 2015), http://magicvalley.com/news/opinion/columns/larson-check-your-bedtime-story-privilege-at-the-door/article_a8568f27-d525-5d1d-af57-daf4a0794230.html.

[6] Jeanine Martin, "Should We Ban Bedtime Reading to Children or Simply Ban Families?," *The Bull Elephant* (7 May 2015), http://thebullelephant.com/should-we-ban-bedtime-reading-to-children-or-simply-ban-families/.

children), perhaps only slightly. Swift has clearly stated that he does not think anyone should be *prevented* from reading bedtime stories to their children—he just thinks parents should occasionally "have [the] thought" that doing so gives their children an "unfair" advantage.[7] But Swift, with Brighouse, does suggest that parents have no right to make effective testamentary bequests, or perhaps even to send their children to private schools. Of course, such ideas are not original to Brighouse & Swift.[8] For example, in hopes of preserving and perpetuating "a homogeneous American culture," in the early 20th century a political coalition including the Ku Klux Klan successfully outlawed private schooling in the state of Oregon—only to have the ban overturned in a landmark decision from the Supreme Court of the United States.[9]

Placing substantial limits on parental abilities to make intergenerational wealth transfers or wield discretionary authority over their children's schooling does seem like pursuit of a measure of cultural homogeneity, though presumably Brighouse & Swift would be quick to disclaim any similarity between the homogeneity they favor and the homogeneity preferred by organizations like the KKK. So what is it, for Brighouse & Swift, that justifies the identification of such ordinary, widespread, and even

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[7] Joe Gelonesi, "Is Having a Loving Family an Unfair Advantage?," *Australian Broadcasting Corporation* (1 May 2015), http://www.abc.net.au/radionational/programs/philosopherszone/new-family-values/6437058.

[8] For example, see Pierce v. Society of Sisters, 268 U.S. 510 (1925), invalidating Oregon's requirement, targeting the destruction of parochial schools, that all children attend public schools. Or see Allison Benedikt, "If You Send Your Kid to a Private School, You Are a Bad Person: A Manifesto," *Slate* (29 Aug. 2013), https://www.slate.com/articles/double_x/doublex/2013/08/private_school_vs_public_school_only_bad_people_send_their_kids_to_private.html.

[9] Robert Bunting, "Pierce vs. Society of Sisters (1925)."

Constitutionally-protected parenting practices as "unfair" or "too much?" The primary contributor is probably just contemporary egalitarianism; it is all too *de rigueur* to reflexively over-weight equality (in whatever form) as an important interest. This is typically done without explaining why or how any particular inequality grounds a weighty interest, including in cases where an interest in *sufficiency* appears equal (so to speak) to the task. But a complete understanding of Brighouse & Swift's missteps—and why reasonable parenting constitutes a superior account—is best begun from common ground.

1. Brighouse & Swift on Rights and Interests

One aim of Brighouse & Swift's *Family Values* is, they say, to justify the institution of the family—to "explain why it is good that children be raised by parents."[10] The simplest summary of their explanation is that children have certain relevant rights and interests in having familial relationships. Early in their argument they helpfully define "interests" and "rights" as they intend to use these terms:

> We think of a person as having two kinds of interest. . . . [one] in anything that contributes to her well-being or flourishing . . . [and two] in having her dignity respected—in being treated in ways that reflect her moral status as an agent, as a being with the capacity for judgment and choice, even where that respect does *not* make her life go better. . . .
>
> For us, people have a right to do something when their interest in doing it is weighty enough that others have a duty to let them do it . . . .[11]

This is very similar to the definition of a "right" offered by Joseph Raz and approvingly cited by T.M. Scanlon:

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[10] Brighouse & Swift, *Family Values*, 48.

[11] Ibid, 52–53.

> "X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.[12]

To this Scanlon adds that we have additional important interests, for example in "controlling and directing our own lives,"[13] that can ground rights. These accounts of rights and interests appear compatible—indeed, very nearly identical. Both identify well-being and some measure of autonomy as clearly among our interests, and both identify rights as grounded in interests important enough to impose obligations on others. Significantly, Brighouse & Swift do not appear to claim that they have anything like "manifesto rights" in mind. The way they justify parental discretion and authority over the lives of children is by observing, not that we should for whatever reason aspire toward certain modes of upbringing, but simply that children and adults have important interests "that bear on the question of how children should be raised."[14] The question of how children should be raised is, of course, the question motivating the present project. And while they don't say so in as many words, Brighouse & Swift appear specifically concerned that children should *not* be raised in a way that violates anyone's rights, including the rights (whatever those might be) of the child being raised—which is a central concern of reasonable parenting.

With this account of rights in mind, the primary justification Brighouse & Swift offer in support of the institution of the family is that children have rights to "familial

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[12] Joseph Raz, *The Morality of Freedom*, 166, as quoted in T.M. Scanlon, "Rights and Interests," 71.

[13] Scanlon, *What We Owe to Each Other*, 186.

[14] Brighouse & Swift, *Family Values*, 53.

relationship goods." More will be said about these in the next section, but familial relationship goods are, roughly, the objects of interests important enough to ground rights to the various practices that make it possible for intimate family relationships to exist and to flourish. When Brighouse & Swift claim that parents are nevertheless often allowed to do too much for their children, they frame this as a claim that Western societies routinely permit parents to *violate the rights of others*, perhaps including their own children, in ways unnecessary or unrelated to securing familial relationship goods. Echoing yet another feature of Scanlon's contractualism, they even make a brief argument for all-things-considered judgments and balancing tests that sometimes result in outcomes that are not optimal or, in other words, maximized along some preferred axis:

> Where an all-things-considered judgment means that a value or principle is not to be fully realized, we think it important not to obscure that fact. . . . The alternative, advocated by some (most notably Ronald Dworkin), is to allow conflicts to shape the very way that we understand the conflicting elements themselves. "Fair equality of opportunity," on that kind of view, might mean "the kind of equality of opportunity that we should value, having taken into account the other values at stake." On this approach, one should aim for a way of conceiving values or principles that allows them to form a coherent and systematic set, eliminating conflicts in the very process of conceptualization and labeling. It's true that this is closer to the commonsensical or conventional way of dealing with the problem. In conventional political discourse, especially for politicians but also for the rest of us when we are thinking about political choices, it's problematic to allow or acknowledge incompatibilities, to accept that all good things can't always go together. So there is an understandable tendency to allow one's appreciation of the inevitable conflicts between values or principles to influence the way one conceives those values or principles themselves. But this often becomes unhelpful fudging. Better to keep clearly in mind the values or principles at stake, accept that they will indeed conflict, and be honest enough, with ourselves and others, to acknowledge that all-things-considered judgments are going to involve a balancing act, and hence the incomplete realization of any one.[15]

[15] Ibid., 44–45.

In the ensuing discussion of values and principles, Brighouse & Swift make several references to "prima facie rights," which they define as interests "weighty enough to ground duties in others" when taken on their own, "other things equal," but potentially "outweighed by other considerations . . . that impose competing, and more morally urgent, duties."[16] Introducing the idea of a prima facie right looks like an attempt to facilitate discussions of balance, which appears to be further evidence of their commitment to an account of parents' and children's rights as largely a matter of appropriately balancing competing interests. Their account is, in other words, at least quasi-contractualist, and is correspondingly susceptible to contractualist critique.

If this is all correct, then I would *expect* Brighouse & Swift's arguments—that, for example, parents have no right to "confer advantage" on their children—to proceed in approximately the following way: observe that there is some "familial relationship good," like parental affection, supporting a prima facie parental right to confer advantage on their children, for example through testamentary bequests or private education. Then observe that there is also some other good, say "equality," that gives rise to a conflicting prima facie right *against* the operation of testamentary transfers or private schooling. Assert that, on balance, a principle allowing parents to engage in such practices could be reasonably rejected because, after an informal comparison of losses (here Brighouse & Swift would bring some relevant empirical evidence or assumptions to bear), the objections people have to a principle permitting these practices are weightier than the objections to some feasible alternative principle forbidding them. Next show how the

[16] Ibid., 56.

proposed alternative principle—taxing inheritances at a rate of 100 percent, say, or banning private schooling—cannot on this same empirical analysis be reasonably rejected. Conclude that parents do not have a right to engage in these practices, not because they lack relevantly important interests in affection or discretion or the like, but because allowing parents to engage in these practices imposes unacceptable limitations on other people's interests (in contractualist terms, failing the "feasibility" prong of Scanlon's account of rights).

But this is *not* how Brighouse & Swift's argument proceeds. To Rawlsian objections that family relationships foment inequality they instead respond that "familial relationship goods are," without qualification, "*more important* than fair equality of opportunity."[17] But they also claim that parents have *no* right to "benefit their children by

[17] Brighouse & Swift, *Family Values*, 143 (emphasis added). Brighouse & Swift appear to intend this mention of fair equality of opportunity (FEO) a reference to Rawls, since their "defense" of the family is supposed to serve as a response to the liberal worry that fair equality of opportunity "can be only imperfectly carried out, at least as long as the institution of the family exists." See John Rawls, *A Theory of Justice*, 105. Very generally, of course, FEO is supposed to describe a state of affairs in which the facts of one's birth do not dictate the story of one's life—arguably including one's place in social hierarchies, educational or vocational opportunities, personal wealth, political power, and much else besides. But described in this way, FEO is as plainly aspirational. There is no life in which the facts of one's birth are the *only* factor in one's biography (e.g. a hereditary prince may be deposed well in advance of a presumed coronation), and there are no social hierarchies where the facts of one's birth are *wholly irrelevant*, either (since a child born into a society with maximal FEO would likely benefit from FEO only as an accident of the time and place of their birth). On a sliding scale between these imaginary extremes, there is ample room for debate concerning both ideal and practicable balance. Theorists who argue in "favor" of FEO are mostly arguing, I think, that we should do things in the future such that facts about birth will matter less in people's lives than they have in the (recent?) past. But of course there are many facts about birth it would be objectionable to cause to not matter; in particular, the personal relationships we have with our parents will ordinarily be something we would object to having made (or treated as) meaningless.

The literature on FEO is too vast, and too diverse, to comprehensively

conferring advantage on them in a way that undermines fair equality of opportunity,"[18] even though parents *may* have a right to do things that "will, as a matter of fact, confer advantage."[19] What is going on here? Clearly Brighouse & Swift think that *something* about families is more important than (a certain kind of) equality. But their clearest policy recommendations are made in the context of *denial* that parents have the kinds of rights that seem like obvious candidates for securing familial relationship goods—rights that both law and tradition have recognized in the past and continue to recognize today. In particular, Brighouse & Swift clearly agree that it would be appropriate to tax testamentary bequests at a rate of 100 percent—in other words, that there is *no* (prima facie?) right to the operation of testamentary transfers. And there can be no question that Swift, at least, thinks private schooling should be outlawed entirely—in other words, that it would not violate anyone's rights to *ban* private schools. He is especially clear about this in a book aimed not at philosophers, but at parents—a book aimed not at merely *denying* that parents have a right to send children to private schools, but at actually bringing about a political situation in which parents lack even the *option*. In *How Not to be a Hypocrite*, Swift writes that "the value to parents of being able to send their children to a private . . . school is not sufficiently great, and the costs of letting them do so are

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accommodate here. Fortunately, it should suffice for the purposes of this chapter to recognize that "equality" is something in which many theorists think we all have an important interest, and that "fair equality of opportunity" is one kind of equality that seems, to many, a plausible formulation of that interest. Since my own position is that equality does not appear to be something in which anyone actually has an interest, further development of FEO seems moot.

[18] Brighouse & Swift, *Family Values*, 137.

[19] Ibid., 119.

sufficiently serious, for us to choose rules that ban that option."[20] He strives to fulfill the titular promise of *How Not to be a Hypocrite* by suggesting that *where* private schools are permitted to exist, parents may have a variety of justifications for enrolling their children, but should for Rawlsian reasons[21] pursue a political agenda of outlawing private schooling. On his own, Brighouse approaches the issue more pragmatically, observing that egalitarians "used to argue for [the] abolition" of private schools and expressing doubt that this is ever likely to happen—but given his identification of certain private schools as "the most important symbols of educational inequality," it would be disingenuous to suggest that Brighouse favors, or is even plausibly neutral toward, private education.[22] When writing together, Brighouse & Swift identify one non-

[20] Swift, *How Not to be a Hypocrite,* 69–70. The omitted portion refers to selective schools, the United Kingdom's approach to academic tracking—sorting students by academic ability. Swift's main concern about selective schools appears to be that he thinks community cohesion is better-engendered by common schools. This issue is clearly related to the question of parental rights in directing their children's education, but is more empirically complicated, and will typically depend more on the inherent capabilities of any given child than on the interests of parents generally. In an effort to keep this chapter to a manageable length, and since it is not an issue raised by Brighouse & Swift in *Family Values*, I will not here take up the question of selective schools and academic tracking.

[21] Specifically, Swift refers without citation to a simple version of Rawls' veil of ignorance as an "unbiased way of thinking about how biased people should be allowed to be." Ibid. 14.

[22] Brighouse, *School Choice and Social Justice*, 206. In conversation on 23 Feb. 2019, Brighouse suggested to me that he favored the banning of private schools in the U.K., but reiterated that he did not think such a ban was a political possibility. He also suggested that he did *not* favor banning private schools in the U.S., but that he held this view in response to prevailing First Amendment jurisprudence forbidding religious education in publicly-funded schools. In the U.K., by contrast, many "faith schools" are publicly funded and teach the national curriculum but are permitted to determine their own religious studies curriculum—so banning private schools would not have the same religious liberty implications there.

exhaustive reason to deny that parents have a right to enroll their children in public school, but possible reasons to *affirm* such a right they do not explore at all.

Something they *do* explore—indeed, the thing they seem most interested in resolving—is the tension that arises between the pull parents feel to promote "their children's well-being, by (almost) whatever means," and the egalitarian accommodation of "other children's interest in fair equality of opportunity."[23] That tension is a hint, I think, at what Brighouse & Swift's account actually misses. In Chapter 2, I noted that sometimes the thing we have most reason to do is still, in some sense, regrettable—because we feel the pull of separate moral domains (like the domain of "what we owe to each other" and the domain of parenting) but are unable to respond, or respond fully, to the demands of both. Unfortunately, Brighouse & Swift do not actually develop their account of rights sufficiently to recognize that they have come up against a moral domain problem. However their attempt to accommodate "familial relationship goods" gets them very close.

2. Familial Relationship Goods

Let us consider in greater detail, then, the "familial relationship goods" at the heart of their account. Interests in familial relationship goods, Brighouse & Swift claim, can be used to show both that families are important and that many family practices are either compatible with or weightier than certain claims about, among other things, equality. It seems, given their (and Scanlon's) account of rights and interests, that this might be accomplished simply by observing that sometimes a person's interest in something like equality will be weightier than another person's interest in a certain

[23] Brighouse & Swift, *Family Values*, 153.

familial relationship good, and sometimes not. But Brighouse & Swift never state it that way, and their metric for what *specifically* counts as a familial relationship good, and what does not, is never made entirely clear. This leaves some uncertainty as to which rights (if any) familial relationship goods actually ground. Nor do Brighouse & Swift offer an exhaustive list of familial relationship goods, though they do mention examples like "intimacy and spontaneity" as being specifically what is "indeed valuable about the family."[24] They also observe that in order to

> develop into flourishing adults . . . children need to have a particular kind of relationship with one or more, but not many more, adults. Of course, what exactly they need from it changes as they develop: an infant and an adolescent will have different needs. And, again, of course, any child at any given time needs the relationship to supply a complex mixture of things: a feeling of being special, lessons in self-discipline, paternalistic authority within certain domains, and so on. When we say that children need *parents*—indeed that they have a *right* to a parent—we are saying both that there is an essential core to what they need that is best delivered by particular people who interact with them continuously during the course of their development, and that those particular people are able to provide the combination of things needed at any particular time. Continuity and combination are implied by the idea that what children need is a particular kind of *relationship*.[25]

Aside from a (likely inadvertent) use of the maximizing word "best," all this seems plausible. Certainly there is much empirical literature suggesting that the stability of parent-child relationships has substantial impact on children's adult lives.[26] So it seems

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[24] Ibid., 11.

[25] Ibid., 84.

[26] For example, S.M. Bell and Mary Ainsworth, in "Infant Crying and Maternal Responsiveness," 1188, note that "an infant whose mother's responsiveness helps him to achieve his ends develops confidence in his own ability to control what happens to him." See also Celeste Kidd, Holly Palmeri, and Richard N. Aslin, "Rational Snacking." "Attachment theory," as the work of Ainsworth and related scholars has come to be

reasonable to interpret Brighouse & Swift as claiming that familial relationship goods are the things parents and children have interest in securing, given their interest in the existence and perpetuation of their valued and valuable relationship. But instead of identifying relevant rights by balancing interests in familial relationship goods against competing interests, Brighouse & Swift claim that if something really is a familial relationship good, then the associated interests just *are* weightier than countervailing interests in fair equality of opportunity. At least, that is what they appear to be saying when they claim that "familial relationship goods are *more important* than fair equality of opportunity."[27]

There are at least three contractualist ways to read this claim. One is that the competing interests Brighouse & Swift identify as "fair equality of opportunity" are simply unimportant—that there is a prima facie right to familial relationship goods, but not to fair equality of opportunity. Consider a claim like "freedom of expression is more important than freedom to use plastic drinking straws." There might be some context in which one person's interest in using a plastic drinking straw could outweigh someone else's interest in free expression, but it is difficult to imagine this playing out in reality. So an assertion that one kind of interest is more important than another could be an assertion that the second interest *lacks importance*, at least in likely contexts of comparison. This is not, however, what Brighouse & Swift appear to be claiming. In fact

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known, is not universally accepted among psychiatric professionals (is anything?) but my experience with critiques of attachment theory has been that they appear to be primarily politically, rather than empirically, motivated. In particular, attachment theory generates a lot of attention in the "Mommy Wars" mentioned in the preface of this project.

[27] Brighouse & Swift, *Family Values,* 143 (emphasis added).

they routinely treat equality generally, and fair equality of opportunity in particular, as important interests grounding, at minimum, prima facie rights.

So another possible meaning of the claim that familial relationship goods are *more important* than fair equality of opportunity is that the interests Brighouse & Swift identify as "familial relationship goods" are exceedingly important, such that they always trump other important interests, or at least always trump *these* important interests. Consider, for example, a claim like "the right to bear arms is more important than the right to feel safe." In this claim, two seemingly important interests are identified alongside an assertion that one nevertheless always trumps the other. On the contractualist approach, claims of this nature are *extremely* suspicious. Even though everyone should agree that the right to bear arms is grounded in important interests,[28] the idea that nobody's interest in feeling safe could ever, under any circumstances, be *even more important* than an interest in bearing arms is surely mistaken. If it were possible to construct a clear hierarchy of important interests, then there would not be much place for the informal comparison of losses that Scanlon identifies as central to contractualism.[29] So claims of this nature, if they are to be treated as more than rhetorical or question-begging,[30] must be made in the context of some compelling explanation of how one

[28] Important interests grounding the right to bear arms include, relevantly, an interest in feeling safe, along with more obvious interests like the capacity to defend oneself and others from hostile aggressors.

[29] "Much" because, presumably, there would still be a place for conducting an informal comparison of losses when dealing with conflicts between identical rights—such as when one party's right to free speech comes into conflict with another party's right to free speech. But this seems like a trivial exception to the observed problem.

[30] Notice that this parallels a potential problem, identified in Chapter 1, with referring to something as a "manifesto right."

apparently important interest really does trump another apparently important interest every time—which it would, if it were strictly "more important." Brighouse & Swift do, early on, allude to such an explanation, claiming that because familial "relationships are vital sources of joy, self-realization, and flourishing . . . it's more important that human beings get to enjoy such relationships than that they get a level playing field on which to compete for jobs, money, and status."[31] In context, Brighouse & Swift provide this argument as a defense of familial relationship goods against the claim that "the only way really to deliver fair equality of opportunity would be to get rid of parent-child relationships—to abolish the family—altogether."[32] I think it is true that fair equality of opportunity is not sufficiently important to justify the abolition of the family, but I think it is likely that fair equality of opportunity is not sufficiently important to limit parental discretion at all. This is compatible with the idea of familial relationship goods *including parental discretion*—since it seems to me that parental discretion is a familial relationship good, if anything is—being "more important" than fair equality of opportunity, as Brighouse & Swift claim. Yet they *clearly* disagree that fair equality of opportunity is not sufficiently important to limit parental discretion at all; much of their work is dedicated to identifying ways in which parental discretion should, on their view, be limited by egalitarian concerns. So Brighouse & Swift must be excluding parental discretion (and what else?) from their idea of familial goods. But they never explicitly say that this is something they are excluding from familial relationship goods, much less explain *why* they exclude it.

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[31] Brighouse & Swift, *Family Values,* 33.

[32] Ibid.

So a third way to accurately claim that familial relationship goods are more important than fair equality of opportunity would be definitional: exclude from the definition of "familial relationship good" any interests that are not more important than fair equality of opportunity, even if those interests otherwise *appear* to be familial relationship goods.[33] It has already been observed that Brighouse & Swift disclaim the approach of eliminating conflicts "in the very process of conceptualization and labeling" values and principles.[34] In spite of that disclaimer, Brighouse & Swift give every appearance that their idea of "familial relationship goods" actually has a built-in sensitivity to what they take to be the demands of equality.

This is best illustrated with an example, though I will first point out the problem in theoretical terms. In clarifying the matter of rights grounded by familial relationship goods, Brighouse & Swift note that "what parents have a right to are the activities internal to the valuable relationships; there is no right to bring about the external by-products of those activities, and that relationship, that might in fact arise in particular contexts."[35] Given their own account of rights, this appears to be a claim that parents have a sufficiently important interest in performing certain relationship-affecting activities that others are obligated against preventing those activities, but parents do *not* have a sufficiently important interest in the consequences of certain relationship-affecting activities that others are obligated against preventing those consequences (on these

[33] That is, the kinds of goods that characterize joyful, intimate, spontaneous, self-realizing relationships between parents and children.

[34] Ibid., 44.

[35] Ibid., 119.

grounds). This is only a coherent position in cases where the interest parents have in performing relationship-affecting activities does not depend on the consequences of that activity. So for example, if I have a right to read bedtime stories to my children, but doing so will give them an advantage at school, no one is obligated (on these grounds) against depriving my children of that advantage, either by hampering their education in some other way[36] or (preferably) improving the education of other children sufficiently to eliminate their disadvantage. The problem for Brighouse & Swift is that many of the interests parents have in parenting activities exist precisely because of the "external" consequences they bring about; the "external" consequences of the activity are an important part of why they have an interest in performing it.

More concretely: Brighouse & Swift think I have a right to leave my house to my daughter when I die, because the sentimental value of such a bequest is an important part of our loving relationship—so important that others have a duty to refrain from interfering in that relationship, even if it is a relationship that somehow foments objectionable inequality. They just don't think I, or my daughter, have any right that she actually *benefit* from such an inheritance, beyond the warm feeling of having been remembered in my will. This is because, though I might have a right to do some things that *happen* to confer various "advantages" on my children, Brighouse & Swift think I lack any right to *actually* confer advantages on my children. This seems sufficiently strange that I have been accused of engaging an uncharitable reading. But Brighouse & Swift are clear on this point:

[36] This approach would be a kind of leveling-down, plainly objectionable but on entirely other grounds.

> Requiring that the beneficiary [of an inherited house] actually live in the house, taxing the financial benefit (including any eventual sale of the house) at 100 percent, so that only the sentimental benefit is realized, is entirely consistent with recognizing the relationship goods case for permitting the bequest.[37]

Reference to sentimental benefit as the "only" relationship goods benefit, along with reference to the eventual sale of the house being *included* among the possible financial benefits to be taxed, is unambiguous language to the effect that other financial benefits, like the financial benefit of living somewhere rent-free, are also legitimately taxable at a rate of 100 percent. In other words, Brighouse & Swift view the *sentimental benefit* of inheriting a house from one's parents as a familial relationship good, but do *not* view any inheritance of economic advantage as such a good: they treat the sentimental and economic benefits of testamentary bequests as entirely separable, as "external" consequences, essentially by-products of parental activity. They later explain that, on their view, parenting just *is not about* economic benefits. Parenting, they say, is about

> having a relationship of the right kind with one's child. . . . Of course, that kind of relationship . . . requires children to feel that their parents regard them as special, and care more about them than they do about other people's children. But . . . it does not, we claim, require parents to act on their natural and loving motivation generally to benefit their children where doing so will conflict with other children's interest in fair equality of opportunity.[38]

The claim that parents are not *required* to benefit their children in such a way is not, of course, the same as a claim that parents are not (or should not be) *permitted* to act in this way. There are some activities, like reading bedtime stories to children, that Brighouse &

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[37] Brighouse & Swift, *Family Values,* 140.

[38] Ibid., 153.

Swift think *do* conflict with (at minimum) other children's interest in equality, but which parents are nevertheless permitted to perform. For Brighouse & Swift, it appears that whether such activities are permissible hinges on whether they are integral to the realization of familial relationship goods, or not. And the actual receipt of economic benefits from an otherwise-sentimental inheritance is, apparently, not something they recognize as integral to the realization of familial relationship goods.

But parents and children don't have any apparent interest at all in bequests aside from the interest they have in those bequests being effective. In *policy* terms, it's not hard to see how (say) an estate tax exemption for sentimentally-valuable real and personal property would be an inducement to gamesmanship. The tax code is a system of incentives and disincentives; exempting something from taxation creates an incentive to put as much of one's wealth as possible into that form. If I am the child of outrageously wealthy parents and can inherit anything tax-free so long as it is of significant emotional value to me, that creates an incentive for me to have—or to feign—significant emotional attachment to the family mansion, the family yacht, the family jewels, the family garage full of family Lamborghinis, and so forth. If I am an aspiring maximalist who wants my one child or grandchild to inherit as much of my wealth as possible, I have reason to put as much of my wealth as possible into goods to which my heirs can attach reasonable claims of sentimental attachment. The practical consequences of tax policy suggest that solving the (realistically, rare) problem of compelled divestiture of expensive but

sentimentally-valuable inheritance property is probably best left to careful legislative drafting and, in especially unusual circumstances, a wise judiciary.[39]

In terms of theory, however, it is not at all clear why familial relationship goods could ever exclude economic benefits as not-integral. In fact numerous economic benefits, like the provision of room and board for minors, are surely familial relationship goods if anything is, quite apart from any emotional value the provision of daily needs might furnish. Would Brighouse & Swift favor a 100 percent tax on the economic benefit to a college-aged child of being allowed to continue living at home while pursuing higher education? Such a conclusion is consistent with their account of testamentary bequests. But like the inter vivos provision of room and board, the sentimental character of testamentary transfers plainly depends on what Brighouse & Swift are treating as an external by-product of the bequest: the physical benefit of the transfer. Imagine the scenario Brighouse & Swift propose, in which I am free to leave my house to my daughter, knowing in advance that by operation of law she will gain no benefit more material than a warm feeling of having been acknowledged in a testamentary document. What is the *actual* sentiment of such a bequest? Is it that I love her and want her to have the house where she grew up, and an unfortunate but emotionally-irrelevant fact about the law is all that makes leaving my house to her functionally identical with leaving her nothing? Of course not: under a legal framework where leaving my house to someone results only in them nominally "owning" it an instant before its removal from their possession without compensation (or, worse, their being compelled to make extraordinary

[39] I make no claims here concerning the impact on my argument of encountering a shortage of either careful legislative drafting or wise judges.

payments to the government for the privilege of living in what was supposed to be their own home), such a bequest would plainly be a white elephant—if not a slap to the face from beyond the grave. It says, "I remember you, and acknowledge that I am expected to leave something of myself in memoriam of our relationship, but you deserve no such benefit from me, so I will leave you less than nothing: I will leave you paperwork." Far better under such laws, and assuming I love my daughter as a father should, for me to either sell my house to my daughter (if she wants it and can afford to pay fair market value)[40] or (if she can't) leave the house directly to the government, sparing my daughter the pointless bureaucratic hassle and concomitant extended exercise in heartbreak.

When Brighouse & Swift undertake to defend their specific claims about private schooling and intergenerational wealth transfers against this kind of objection, they first suggest that we needn't be concerned about the cost to children's interests when denied certain advantages within their parents' reach, because in a society where bestowing such advantages is prohibited by law,[41] children could have no reason to complain about their parents not providing it.[42] Their admission that this response is "conjectural" does nothing to prevent it from being pointlessly conjectural; that people's interests could be other than they are does not seem relevant to the present weight of an interest that they do in fact have. Brighouse & Swift also suggest that parents lack any legitimate objection to

[40] For non-lawyers puzzled by the caveat: failure to pay fair market value would in many jurisdictions subject my daughter to tax liability for the portion of the market value deemed by the relevant authorities to have been "gifted" to her, above any relevant gift exemptions.

[41] This, recall, is the kind of society Brighouse & Swift think we should be working to create through political activity.

[42] Brighouse & Swift, *Family Values*, 138.

constraints on their parenting so long as they have an "adequate set of [alternative] means by which to realize" the familial relationship goods Brighouse & Swift treat as primarily accounting for the family's value.[43] But what "adequate alternative" exists to the familial relationship good of having a parent who *actually enables you* to live your life just a little bit freer from various of the wider world's economic expectations? If my parents have an interest in leaving me a house because they wish to spare me the pain of taking an unpleasant but lucrative job in response to economic pressures including the price of housing, it is not an interest that arises from the importance of expressing to me that wish, but from the actual consequences of leaving me their house.

In their closing comments on equality and the family, Brighouse & Swift write:

> While it is important to keep clear on how our preferred balance of values will not guarantee children fair equality of opportunity . . . this perspective has the great merit of focusing our attention on what balancing of values really *can* be justified to those affected by them, especially to those who fare badly under them. It thus demands precise specification of the different domains of value at stake and careful consideration of the ways in which they conflict, and of how we should weigh them when and where they do. We need to know which of the mechanisms that currently disrupt fair equality of opportunity are worthy of protection despite their disruptive tendencies.[44]

This all appears to be compatible with my account of reasonable parenting. The problem is that any ordinary familial practice Brighouse & Swift think is *not*, on balance, worthy of protection, they do not proceed to identify as a familial relationship good the interest in which is sometimes or always outweighed by other interests, but as *not a familial relationship good*. The effect is to eliminate conflicts in the process of conceptualization

[43] Ibid., 143.

[44] Ibid., 45.

and labeling, in spite of Brighouse & Swift's claim that this is not their intended approach. Furthermore, the "precise specification of the different domains of value" they foreshadow in this passage never materializes, even though the interests people have in familial relationship goods appears to track something very much like my own account of the moral domain of parenting.

Because Brighouse & Swift's weighing process is not made explicit, political heuristics and prejudices are, I suspect, permitted to thumb the scales. Given what they claim about rights, interests, and balancing, what Brighouse & Swift needed was a clear account of what sorts of interests people actually have, and how those interests should be balanced when they come into conflict. Instead, they introduce the idea of "familial relationship goods," which are supposed to be the objects of interests in having certain kinds of relationships. This potentially tracks something like the moral domain of parenting explored in Chapter 2—until Brighouse & Swift exclude the objects of interests of this kind that they happen to believe are less important than certain kinds of equality. Is there anything weightier or "more important," in turn, than familial relationship goods? Brighouse & Swift admit that their account does not generate a clear answer to this question—"not, alas, because we lack the space but because we do not have such an answer; judging the considerations at stake would require us to defend a general theory of global justice."[45] As it happens, the first two chapters of this project were dedicated to the application of a general theory to questions of precisely this nature, including some specification of the relevant moral domains. Scanlon opens the way forward, allowing us

[45] Ibid., 144.

to undertake an independent inquiry into the weights and balances that Brighouse & Swift elide.

3. Balancing Interests in Relevant Principles

So: Brighouse & Swift believe that it would be permissible for governments to prevent (effective) testamentary transfers or enrolling children in private schools because these things give some children an unfair advantage over other children whose parents cannot or do not engage in such practices. They aver that some family practices likely to generate unfair advantages, like reading children bedtime stories, are permissible insofar as those practices are inseparable from interests weightier than interests in equality, and call the objects of these interests "familial relationship goods." My objection is that Brighouse & Swift do not make sufficiently plain the balancing of interests in which familial relationship goods must, to accomplish what Brighouse & Swift intend them to accomplish, be grounded. But this is not an argument that they have *not* conducted such a balancing, only that it is not something they appear to have ever made adequately explicit. To avoid subjecting myself to my own complaint, I need to explicitly conduct the balancing inquiry that Brighouse & Swift imply but do not perform.

It is clear that one of the main interests Brighouse & Swift have in mind is equality. They even go so far as to identify themselves as distributive egalitarians with regard to familial relationship goods, not in the sense of wanting to distribute children (which would violate the relationship goods account by terminating valuable relationships) but in the sense of wanting to distribute, among other things, opportunities

to secure familial relationship goods.[46] The primary mechanism they identify for distribution is, roughly, preventing people from sending their children to private schools or leaving nice inheritances, and otherwise changing society in ways that, for example, shorten the hours that parents spend laboring. This should, they think, allow a greater number of parents to dedicate their newly-free time to securing familial relationship goods. If someone does have an important equality interest that outweighs my and my children's interests in sending them to a private school, or leaving them a generous inheritance, or reading them bedtime stories, then Brighouse & Swift's policy arguments likely succeed no matter the roughness of the road they traveled to get there. This follows from my own account of how children should be raised:

[46] Brighouse & Swift's project, like this one, is primarily concerned with the relationships between parents and children, but it is interesting to note that because familial relationship goods exist, by definition, within families, and all families ultimately owe their existence to heterosexual reproductive pairings (regardless of the social shape those pairings ultimately take), a commitment to improving the overall "distribution" of familial relationship goods is guaranteed to run up against the problem of people who want to raise children but either cannot or will not create those children themselves. Both the forcible redistribution of children and the forcible redistribution of (hetero)sexual activity appear unacceptable for what I take to be obvious reasons, though one economist has, controversially, raised the possibility of giving the involuntarily celibate compensation in the form of cash payouts. In "Two Types of Envy," Robin Hanson observes that sexual activity "could be directly redistributed, or cash might be redistributed in compensation." Hanson goes on to observe that "there seems to be little overlap between those who express concern about income and sex inequality. Among our cultural elites, the first concern is high status, and the later concern low status." This ties the issue to his work with Kevin Simler, in *The Elephant in the Brain*, on hidden motives and status signaling games. There is not space here for a meta-philosophical exploration of the way in which professional philosophers play status signaling games with their arguments and publications, but it is certainly striking that egalitarian theorists return again and again to criticism of private schooling and intergenerational wealth transfer while scarcely seeming to notice numerous inequalities that do not happen to reinforce their preferred political narratives—like, for example, status inequalities arising from academic hierarchies instead of status inequalities arising from differences in wealth.

1. Caregivers should act in accordance with a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.
    a. This means, in part, that it is not permissible for caregivers to violate anyone's rights in pursuit of caregiving, because rights are constituted by principles that no one could reasonably reject.
2. Parents are responsible for their children. Such responsibility is both reason to meet certain caregiving obligations, and reason to value children in certain ways. But different parents will value their children differently, depending on various facts about themselves and their world.
    a. Whatever else parents have reason to do, one way that "what we owe to each other" influences the domain of parenting is by obliging parents to furnish their children with a community-appropriate moral education, because a principle allowing parents to neglect such education could be reasonably rejected both by other parents and by affected children.

If sending my children to a private school violates someone's rights, it is not permissible to send my children to a private school. Likewise leaving an inheritance, or really any other behavior that in fact violates people's rights. But the operative question is, *do* people actually have important equality interests that outweigh my and my children's interests in the practices Brighouse & Swift identify? On balance, the answer is clearly *no*.

A. Private Schooling

Consider the case of providing children with a private education. Sending children to a private school seems unlikely to deprive them of a community-appropriate moral education; to the contrary, attending to a child's education not only meets caregiving obligations, but likely also contributes to their acquisition of a moral education. It also seems plausible that parents could value their children such that they see themselves as having reason to dedicate time and treasure to sending them to a private school, so 2 and 2.a are satisfied. Is sending children to a private school disallowed by a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement? A properly contractualist balancing of interests calls for an informal comparison of losses[47]—a consideration of "various individuals' reasons for objecting to [a proposed principle] and alternatives to it."[48] In other words, the question is, what do other people stand to lose if parents are allowed to enroll their own children in a private education? And what do parents or their children stand to lose if they are forbidden from doing so?

The idea that permitting parents to enroll children in a private school inflicts "loss" on others is, I think, primarily rhetorical. There are clearer, less tendentious ways to state what has happened, since "loss" is rather the opposite of what happens when one person's situation *improves* while other people's situations are held constant. Characterizing one person's improved existence as a "loss" because others find their position *relatively* worse is a move with some utility in economic analysis, but as moral

[47] Scanlon, "Contractualism and Utilitarianism," 128.

[48] Scanlon, *What We Owe to Each Other*, 229.

rhetoric I find its ubiquity objectionable because it tends to obscure what is actually happening, or likely to happen. Would money spent sending children to a private school, if parents were *forbidden* from spending it in this way, instead be spent in a way that improves the distribution of familial relationship goods? Very likely parents would simply spend that money on other educational resources, like books or tutors, so treating private school spending even as a *relative* loss immediately assumes too much. Perhaps this is why Brighouse & Swift place so much emphasis on the idea of externalities imposed on others by one's personal attainments, noting that some goods,

> like education, are manifestly positional. The competitive context makes it obvious that some parents' buying their children a superior education harms the prospects of others. Other goods we might call latently positional. Health care might seem different from education—it's not obvious how one child's being healthier than another is bad for the latter. But in fact the relation between health and educational achievement means that, in raising your child on a good diet and ensuring that she gets proper exercise, you are damaging the competitive chances of less healthy children.[49]

The concept of "positional goods" is borrowed from economics,[50] characterized early on by philosophers as "a good valuable to some people only on condition that others do not have it."[51] More recently, Brighouse & Swift defined positional goods as "goods the absolute value of which, to their possessors, depends on those possessors' place in the distribution of the good—on their relative standing with respect to the good in question."[52] While these philosophical glosses are not strictly *wrong,* they obfuscate

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[49] Brighouse & Swift, *Family Values*, 43.

[50] Specifically, from Fred Hirsch's *Social Limits to Growth*.

[51] Martin Hollis, "Education as a Positional Good," 236.

[52] Brighouse & Swift, "Equality, Priority, and Positional Goods," 474.

something about the way positional goods actually operate. Because the value of a positional good, or part of the value of a good with a positional aspect, is conditional on others *not* having it, obtaining positional goods first and foremost imposes externalities *on others who possess the same good*. Sending my child to a private school *might* arguably diminish the prospects of children enrolled in public school, at least by comparison, but the relevant "cost" of positional goods is really imposed on children already enrolled in private school—because the more children there are graduating from private school, the less of a competitive advantage it presents to do so. If *everyone* attended privately-operated schools, no one would gain any special advantage thereby, and it would lose its positional aspect entirely. Ascertaining the worth of private schooling would then be limited to learning whether the education provided was better or worse, or more or less financially efficient, than an alternative arrangement in which everyone attended public neighborhood schools instead. In either system, however, children who are more privileged than my children are relatively disadvantaged when my children gain competitive advantages of other kinds, and children who are less privileged than my children similarly find themselves relatively disadvantaged. In fact the higher one is on any given "slope" of advantage, the *more* they arguably have to lose from competition; we might call this the "silver medal effect," after the phenomenon of bronze medalists at the Olympic Games being happier with their having managed to secure any award at all than those who see themselves as having "lost" the gold.[53]

This fact about positional goods makes it very hard to see how they serve as good evidence against the permissibility of private schooling. Brighouse & Swift, in spite of

[53] See Victoria Medvec, Scott Madley, and Thomas Gilovich, "When Less is More."

some of the things they say about "fair equality of opportunity" being about more than jobs, treat it as obvious that allowing parents to enroll their children in private schooling specifically disadvantages children who don't get a private education, and does this by reducing the likelihood that they'll get quality secondary education and employment. Suppose permitting private school enrollment actually causes such disadvantages, instead of being (as I suspect is very likely) simply correlated with such disadvantages by virtue of some shared cause. Even if we allow that this represents a genuine loss, *how much* of a loss does it actually represent? It is a misleading exaggeration to suggest that permitting private schooling of some children is either necessary or sufficient to deprive anyone of relevant opportunities, since primary education is *at most* just one of many factors determinant of the opportunities one encounters later in life. Some children might arguably find their circumstances comparatively worse if other children attend private schools, but even this is far from obvious. There is evidence, for example, that the existence of market competition in the form of private schools improves the quality of education delivered by public schools.[54]

Such empirical facts are an important part of a thorough balancing of interests. There are even a variety of things that, if they were true, *would* support an argument that losses accrue to the students of public neighborhood schools under a principle allowing private schooling. If failure to attend an expensive private school automatically precluded children from even one kind of career, lucrative, prestigious, or not, it would be extremely difficult to justify a principle allowing private schooling to people who were,

[54] See, for example, David Figlio and Cassandra M.D. Hart, "Does Competition Improve Public Schools?," 78, where it is concluded that multiple measures of competition are "positively related to student performance on state math and reading tests."

through no particular fault of their own, unable to attend. But, clearly, allowing parents to enroll their children in private school does not have this effect, given the number of American politicians, movie stars, professional athletes, college professors, doctors, lawyers, and so forth who were publicly educated.[55] At an even greater extreme, if allowing parents to send their children to private school entailed that someone would *die*, that person would have a reasonable complaint against a principle allowing parents to do so—but of course, no such person exists.

In fact Brighouse & Swift arrive at this absurdity, when they note that bedtime stories "may indeed be crucial for familial relationship goods," but wonder if parents could "really claim a right to read them in a world where their opportunity cost can be measured in the lives of others?"[56] While they do not *claim* that the opportunity cost of reading bedtime stories can be measured in the lives of others, the implication is that there are at least *some* seemingly-trivial parenting practices with an opportunity cost measured in lives. There does not appear to be any evidence that this is remotely true. If I knew that reading a bedtime story to my children would *kill* someone, I would almost certainly not have the right to do so. The problem for Brighouse & Swift is precisely that,

[55] While failure to attend an expensive private school *as a child* does not apparently preclude children from even one kind of career, there are several prestigious positions that *do* appear to manifest such exclusions—not in connection with primary education, but with undergraduate and (more often) graduate work. The lack of law school diversity among justices of the Supreme Court of the United States of America is particularly illustrative. This is a well-known fact about the Court, and yet I am unable to find a single philosophical text devoted to the abolition of Harvard or Yale, while texts devoted to the abolition of private primary schooling are too numerous to list. Likewise, faculty hiring committees in higher education are plainly sensitive to institutional prestige and pedigree. If primary schools should *not* emulate such "meritocratic" systems of matriculation and advancement—why not?

[56] Brighouse & Swift, *Family Values*, 144.

outside the world of tortured hypotheticals, it would be *totally unreasonable* to attribute anyone's death to me reading my children bedtime stories, just as it would be totally unreasonable to attribute anyone's unemployment or long work-day to a principle permitting private schooling (aside, of course, from the long work-day of the private school teacher!). Claims along these lines are simply rhetoric, exaggerations at best and often actively mendacious. Given the facts about the world presently available to me, the *actual losses* imposed on anyone by a principle allowing parents to enroll their children in private schooling appear to fall somewhere between infinitesimal and nonexistent.

It may be worth noting here the background assumptions from which Brighouse & Swift appear to be drawing their overblown concerns. I want to do this cautiously, both because it is substantially speculative and because it touches on some of the meta-philosophical concerns I appear incapable of avoiding. But there is, I think, a very popular way of talking about the world in which various kinds of suffering is treated—substantially, mostly, or perhaps even totally—as a consequence of someone else's not-suffering. "Privilege," as the not-suffering is sometimes called, exists in such conversations only in conjunction with "oppression." Every person's gain is framed as another's loss, and vice versa, in cases large or small, intentional or unintentional. Interestingly, this seems like further evidence that people tend to think about morality in contractualist ways even when they are totally unaware of contractualism. For what are presumably reasons of self-interest, people tend to prefer that putatively moral calculations come out in their favor. This often involves "playing up" our own losses, while minimizing or dismissing the losses of others as incidental, unimportant, or deserved. The informal comparison of losses central to Scanlon's contractualism,

however, is not something that should be sensitive to rhetorical or "narrative" exaggeration or minimization of losses.

For example, when Bruce's parents enroll him in a private school, Selina's chances of parlaying her public education into a high-paying career are said to be reduced because she "can't compete." Rather than saying "Selina did not receive an adequate education," it is sometimes asserted that "Bruce is (too) privileged," even though the fact of Bruce getting an adequate or more-than-adequate education is not, on its own, causally relevant to Selina's education. Additionally, when Bruce's parents enroll him in a private school, the money they spend goes to paying for nice buildings and quality instructors instead of, say, feeding starving third-world orphans. So Bruce's posh education is sometimes said not only to disadvantage Selina, but also to effectively take food out of the mouths of starving children elsewhere in the world. Such stories can be told in very emotionally compelling ways, but there is no reason to assume that Selina was ever going to be in competition with Bruce for anything, and there is no particular orphan whose untimely death can be attributed to specific dollars going to pay for Bruce's schooling instead of being donated to a charitable organization. Furthermore, the dollars spent on Bruce's schooling are not destroyed; education is not the process of sending socially-desirable smoke signals with piles of burning cash.[57] Those dollars pay, among other things, the salaries of people who might themselves otherwise be disadvantaged, struggling, or even starving. Rhetoric to the effect that every dollar that *isn't* expended

[57] But see Bryan Caplan, *The Case Against Education*, for an empirically thorough argument that education spending, and especially higher education spending, might be in great measure an exercise in sending expensive social signals by engaging in the economic equivalent of lighting barrels of money on fire.

fulfilling the best-publicized, most politically popular "dire needs" of the moment is essentially a dollar spent on murder is just that: rhetoric. Brighouse & Swift even acknowledge Rawls' Difference Principle, admitting that it would be "odd to object to parents' conferring advantage on their children in ways that give their children unfair advantages over others if their doing so tends, over time, to improve the opportunities available to the less advantaged."[58] But they write about private schooling as if it were clearly *not* the kind of thing that satisfies such demands, even though they present no evidence that this is true. In fact they seem entirely confident that the very existence of private schools causes substantial losses to, at minimum, children whose public education they frame as *less valuable* simply because a superior alternative exists. If it were true that the very existence of private schools *caused* children needless suffering, and that a feasible alternative principle would not instantiate such suffering, it would indeed make sense to doubt the permissibility of private schooling. But first, there does not appear to be any particular reason to think that private schools cause suffering, and certainly Brighouse & Swift furnish no reason to think so. Second, alternative principles to one that allows parents to enroll their children in private schools appear to be infeasible.

That is: any principle *forbidding* parents from enrolling children in private schooling is infeasible, because a principle permitting private schooling imposes losses that are tenuous and speculative *at best*, while a principle forbidding private schooling would impose a number of easily-identified and totally concrete losses on a long list of people. Parents with responsibility and liberty interests in diverting time or treasure toward enhancing their children's education would lose an opportunity to do so.

[58] Brighouse & Swift, *Family Values*, 44.

Alternative education venues often cater to discipline cases, heterodox cultural or religious preferences, children with special needs, and children with unusual extracurricular interests, enabling parents to satisfy their children's needs and wants in ways that public neighborhood schools often can't—or won't. The children of these parents would also be denied the opportunity to benefit from parental concern and discretion—and note that this includes children who might *additionally* lack such opportunity as a result of their financial status. Most private schools can be attended on scholarship,[59] such that a principle forbidding private schooling deprives promising students with disadvantaged backgrounds a chance at improved outcomes as surely as it deprives wealthy students of the same. Many parents who are not wealthy make personal sacrifices to send their children to private schools anyway. This not only provides educational opportunities to children but also potentially enhances family relationships by demonstrating parental love in a memorable and consequential way. Even children who attend public neighborhood schools and have no interest at all in attending private schools suffer losses under a principle forbidding private school enrollment. I have already mentioned that competition from private schools tends to enhance public education. Additionally, limited opportunities to secure competitive advantage by participating in student government, gaining leadership experience in clubs and other extracurricular activities, or graduating as the valedictorian become *more available* to the extent that likely competition redistributes itself across alternative venues. The mere

[59] It might be objected that scholarship funds are generally limited, and this is certainly true. What is strange about this objection is that the same people who tend to raise it tend *also* to be opposed to the implementation of vouchers, which are essentially publicly-funded scholarships to help children attend private schools.

existence of diversity in school choice increases the *total number of opportunities* available to children generally, by increasing the dimensionality of competition. The only way to plausibly characterize the advantages garnered by private education as a *problem* is to view the competition slope as strictly univariate. But there are in fact a plurality of position-goods slopes, and eliminating one of them does not *increase* the number or variety or quality of opportunities children have; rather the opposite.

Brighouse & Swift argue that parents "may not defend decisions to . . . send their children to [private] schools, by appealing to their right to confer advantage on their children . . . because . . . parents do not have the right to do the things so described."[60] But this posture conflates two distinct concerns. Parents clearly do not have a *general* right to confer advantage on their children, because while the interests parents have in activities that confer advantages on their children ground a variety of what we might reasonably call parental rights, pursuit of advantage for one's children is properly constrained by what we owe to each other. So in this extremely narrow sense Brighouse & Swift are correct: parents cannot defend decisions to send their children private school *by appealing to their right to confer advantage*, because conferring advantage on one's children is generally not a right. But Swift openly advocates for a *ban* on private schooling, and his advocacy to this end is morally objectionable. Parents have sufficiently important interests in diverting their time or treasure toward enhancing their children's education that this imposes a duty on others to not interfere by, among other things, making laws preventing parents from doing so. It is certainly feasible to impose such duties; in fact the primary limitation imposed on the interests of others by such a duty is a

[60] Brighouse & Swift, *Family Values*, 119.

limitation on whatever interest they have in directing the education of *other people's children*. More will be said about this interest in Chapter 6, but for the most part non-parents appear to have pretty negligible interests in directing the education of children not their own, even when they arguably have important interests in principles making a certain amount of education available at public expense. So it is not merely *permissible* for parents to enroll their children in private schooling; parents have a prima facie right to enroll their children in private schooling. Absent some further, weightier considerations than those identified by Brighouse & Swift or plainly evident to me, it would be morally impermissible to prevent parents from doing so.

The point about feasibility is important. If all parents have a right to enroll their children in private schooling, but most parents are financially unable to actually do so, don't they have a legitimate complaint? Aren't *their* rights being violated? Perhaps! Recall that

> the claim that there is a right is a claim that certain limitations on the discretion to act of individual and institutional agents are *necessary* if important interests are to be adequately protected, and *feasible* as a way of providing this protection. This claim of feasibility is that the cost these limitations impose on our other interests is acceptable given the importance of the interests being protected.[61]

Brighouse & Swift offer no evidence in support of the claim that there are any actual costs imposed by placing everyone under a duty to not interfere with the enrollment of children in private schools. Their background assumption appears to be that private schooling imposes costs in the form of externalities, but even if such externalities outweigh any associated benefits (which seems unlikely), Brighouse & Swift would still

[61] Scanlon, "Rights and Interests," 77.

need to clear the feasibility hurdle on alternative principles forbidding private school enrollment. It is difficult to know what costs would be imposed on other interests by whatever set of duties it would take to ensure that *every* parent was not merely at liberty to enroll their children in private schooling but in fact able to do so, and at acceptable cost to their own interests in, e.g., financial solvency. But if such costs were sufficiently low, a step in this direction might be government vouchers that defray the cost of private schooling, perhaps in a way that phases them out above a certain income threshold. One concern might be that private schools would raise their gross tuition rates in lockstep with the subsidies they received from the treasury, as has arguably occurred in connection with higher education subsidies. This may be a point in favor of a charter model of primary education over a voucher model; one potentially feasible alternative to merely *permitting* private education, after all, would be to *eliminate* public neighborhood schools and replace them with publicly-subsidized private education for all. If private schools are by their very nature superior to public schools (as Brighouse & Swift sometimes seem to treat them), this would be an improvement for everyone. This is an especially important point to consider when people complain that private or charter schooling somehow disincentivizes the funding of public neighborhood schools. If sufficient education could be made available to children through publicly-subsidized private schooling, what reason would there be to fund neighborhood schools at all? On the other hand, economic analysis might show that the cost of guaranteeing universal access to private education would bankrupt the nation, in which case, it could not be asserted as a right—it would be infeasible.

It is worth noting that the question of *actually educating children* has scarcely been raised. Almost everything argued by Brighouse & Swift on the matter is grounded in empirical claims that private schooling statistically correlates with other desirable outcomes (primarily, income), presumed by Brighouse & Swift to be a function of the positional aspect of educational goods. Whether this is supposed to be the result of private schools actually furnishing superior pedagogy, or certificates from those schools signaling value of some other kind, is left unaddressed. The general public's role in upbringing, via public policy, is about so much more than projected earnings that further discussion awaits in Chapter 6. But for now suffice it to ask: if every child were receiving an education that was *sufficient*, what complaint could anyone possibly have against some people receiving more, especially if this tended to actually further-improve education and society generally? Perhaps not all children do receive a sufficient education, but is this *because* some children receive a more-than-sufficient education? I am skeptical that even a *correlation* could be persuasively demonstrated, much less a causal relationship.

B. Intergenerational Wealth Transfer

The issue of testamentary transfer probably gets closer to the egalitarian aspirations that appear, at times, to be the true focus of Brighouse & Swift's concern, because the advantages of controlling substantial wealth have much greater reach than the advantages of going to the "right school." Brighouse & Swift do not *seem* to actually be advocating, politically, for an inheritance tax of 100 percent. But they do claim that their account of familial relationship goods is *compatible* with a 100 percent tax rate on inheritances, and they do not give any indication of suspecting such a tax rate might be

otherwise impermissible. They also do not offer any particular thoughts on where resources confiscated from estates in this manner would be best distributed, beyond mentioning a desire that society be transformed in ways that distribute familial relationship goods (among, presumably, others) more equitably. Their position, rather, is simply that neither decedents nor surviving family members have any important familial interests in preventing governments from confiscating any amount of testamentary property. This might in some ways seem like an easier claim to defend than a more particular principle of wealth redistribution, in the sense that Brighouse & Swift are not left trying to explain, empirically, how confiscating a certain amount of wealth via estate taxes would in fact function to specifically alleviate some particular case of, as they say, dire need. It would not be easy, and perhaps it would be impossible, to justify a principle permitting the confiscation of estate wealth on grounds that the money gained by doing so would be put to *better use* by government actors than by testamentary heirs. This is especially true in connection with government spending in areas like education, where costs have wildly outpaced inflation for decades while failing to deliver commensurate improvement or, indeed, any obvious improvement at all.[62] But at least that approach

[62] The phenomenon, sometimes referred to as "cost disease," does not occur in every sector of the economy, but in the United States it is certainly happening in education, health care, transportation infrastructure, and housing. As Scott Alexander explains the issue, in "Considerations on Cost Disease,"

> Imagine if tomorrow, the price of water dectupled. Suddenly people have to choose between drinking and washing dishes. Activists argue that taking a shower is a basic human right, and grumpy talk show hosts point out that in *their* day, parents taught their children not to waste water. A coalition promotes laws ensuring government-subsidized free water for poor families; a Fox News investigative report shows that some people receiving water on the government dime are taking long luxurious showers. Everyone gets really angry and there's lots of talk about basic

would put Brighouse & Swift in a position of balancing alternative principles in connection with empirical facts. What they are left with instead is an assertion that parents have no right to testamentary transfer grounded in a right to confer advantage, which is a moot point if there are other interests grounding a right to testamentary transfers.

In fact there *are* other interests of exactly this variety. The people who lose under a principle limiting intergenerational wealth transfer certainly include parents and children with direct interest in such transfers (and in the disposition of their own property), but also include individuals who reap the indirect benefits. The clearest case concerns wealth that exists in the form of business ownership interests and other investments, since resources devoted to the generation of wealth are among the most consequential in the health of a nation's economy. Confiscating wealth that would otherwise pass to someone's heirs creates overinvestment in tax-sheltering ventures, disincentivizes investment in new business ventures, encourages the premature closing of functional businesses, and otherwise depletes a nation's savings and investment capital

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> compassion and personal responsibility and whatever but all of this is secondary to *why does water costs ten times what it used to?*
>
> I think this is the basic intuition behind [why] so many people, even those who genuinely want to help the poor, are afraid of "tax and spend" policies. In the context of cost disease, these look like industries constantly doubling, tripling, or dectupling their price, and the government saying "Okay, fine," and increasing taxes however much it costs to pay for whatever they're demanding now.

Or, more pithily,

> Look, really our main problem is that all the most important things cost ten times as much as they used to for no reason, plus they seem to be going down in quality, and nobody knows why, and we're mostly just desperately flailing around looking for solutions here.

by incentivizing mere consumption.[63] Confiscating wealth that exists in the form of savings and investments *diminishes opportunities for everyone* by siphoning fuel from the engines of commerce. A principle forbidding intergenerational wealth transfer imposes some loss on everyone participating in the economy—or, in other words, on basically everyone. Individuals forced by inheritance taxes to, for example, sell or surrender their family home or business can raise even stronger objections to such a principle, given the magnitude of their losses.

Whether these interests are sufficiently important to ground a *right* against government confiscation of 100 percent of one's wealth at the time of one's passing depends, in part, on what others gain under a principle permitting such confiscation, and also in part on what is gained or lost under alternative principles. So for example, as with

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[63] As one commentator observes,

> There is a vast amount of research by academic economists since the 1990s and 2000s linking bequests, gifts and other such windfalls to self-employment, in the UK, the US and around the world. Inheritances are especially strongly correlated with new business start-ups . . . . Savings that were used to finance investments and loans to the broader economy are therefore having to be liquidated to pay for [inheritance taxes], and the proceeds used by the state to pay for its day-to-day expenses, such as wages and benefits. . . . For the economy to grow sustainably, we need more savings, more capital and more investment. Yet wealthier pensioners are encouraged to be short-termist. Paradoxically, given that the tax bites at 40pc, spending £1,000 on a holiday, rather than saving the cash, costs just £600 for somebody expecting to pay the tax. Poorer folk don't have that luxury: for them, spending £1,000 costs just that. There are, of course, many ways of avoiding inheritance tax: working farms are tax-exempt, for example. The result is an inefficient allocation of capital: wealthy people are buying agricultural estates, artificially propping up their price, rather than investing in the stock market, which could generate better returns and help businesses expand.

Allister Heath, "Axe Inheritance Tax, It Causes Too Much Damage," *The Telegraph* (12 Feb. 2013), https://www.telegraph.co.uk/finance/comment/9865475/Axe-inheritance-tax-it-causes-too-much-economic-damage.html.

private education, to whatever extent intergenerational transfers could be reasonably claimed to foreclose the pursuit of important interests to those who lacked wealthy progenitors—or, of course, to actually kill people—a legitimate objection would arise. One common way for precisely these claims to be forwarded is by arguing that intergenerational transfers increase wealth inequality,[64] and that wealth inequality kills.[65] Such slippery-slope arguments seem rarely to take seriously the observation that it is probably not *inequality*, but *poverty*, that kills. My having very little money might lead to a variety of problems for me, but the fact that you have a very large amount of money does not especially make that worse, unless you are monopolizing so many resources that I am frozen out of the necessities of life. Claiming that *inequality* kills is about as plausible as claiming that bedtime stories kill. It *is* possible to construct a narrative in which, like a butterfly's flutter causally cascading into a typhoon, facts about wealth inequality appear to be "responsible" for someone's death. But such just-so stories are more like egalitarian articles of faith than accounts with meaningful explanatory power. So long as people have *enough*, they cannot reasonably object to others having more by virtue of that fact alone.

I will further examine the question of inequality versus insufficiency in the next section of this chapter. Are there other objections individuals are likely to be able to raise, on their own behalf, against a principle forbidding a 100 percent inheritance tax? Part of what makes this inquiry complicated is that there are so many alternative principles

[64] See, for example, Yoko Niimi and Charles Yuji Horioka, "The Impact of Intergenerational Transfers on Household Wealth Inequality in Japan and the United States."

[65] See David A. Ansell, *The Death Gap: How Inequality Kills*.

available (for example, a principle permitting up to 99 percent inheritance tax, or up to 98 percent inheritance tax, and so forth), and discussing them in a reasonably complete way requires not only a fairly comprehensive understanding of economics—in particular, the enormously meaningful differences between material goods, money, and wealth—but also a fairly comprehensive understanding of estate law, tax law and policy, and the intricacies of government welfare spending. Careful elaboration on even *one* of these issues would well exceed the scope of this project. But it should simplify things somewhat to observe that the kinds of objections an individual might raise to a 100 percent inheritance tax will likely be objections that at least *some* individuals could raise to a 50 percent inheritance tax, or a 10 percent inheritance tax—indeed, to almost any amount of inheritance tax at all. It seems likely that there will almost inevitably be *someone* who lacks the financial liquidity to relinquish *part* of the family home, business, or other property, such that almost any amount of inheritance tax could potentially violate *someone's* interest in the disposition of that home or business by forcing them to liquidate an asset with substantial non-monetary value.

Whether such a person could reasonably reject a principle permitting confiscation of this kind will depend on the losses imposed on others by a principle forbidding such confiscation. Here it is more difficult to simplify the inquiry, because such losses will in general depend on the aim of the confiscation. The *usual* explanation for confiscating wealth (testamentary or otherwise) is the financing of government programs. Alternative tax approaches, as well as complex institutional arrangements like the recognition of fiat currency, make it very unlikely that inheritance taxes are ever *necessary* for the provision of, e.g., social welfare programs; at best, they are just one possible source of revenue

among many, and not even an especially bountiful one. In fact the higher an inheritance tax rate is, the more likely people will be to divest themselves of as much of their wealth as possible before they die, so higher inheritance taxes will likely tend to *reduce* inheritance tax revenues over time. The basic pattern of egalitarian arguments on such matters—presented here with an eye to charitable simplification, but admittedly without nuance—is that if Bruce has more than he needs, and Selina has less than she needs, then the obvious answer is to take some of what Bruce has, and give it to Selina. It is well-understood, I think, that the problem with such approaches is that we're not only concerned with making sure that Selina has enough. It is also important that the process of confiscating resources from people with more than they need is broadly morally permissible; for example, confiscating Bruce's resources by executing him is going to be objectionable in ways that simply imposing a sales tax is not. For that matter, confiscating Bruce's resources in a way that destroys the economy or creates political instability is going to be objectionable in ways that will require government actors to either find alternative solutions for people like Selina, or recognize their suffering as unfortunate and regrettable—but, under the circumstances, also inevitable.

At the risk of further muddying the waters, I should acknowledge that worries about economies and political stability point to a host of related issues that bear on the question of intergenerational wealth transfer, none of which I can hope to conclusively resolve here. I am less confident in my analysis of the permissibility of intergenerational wealth transfer than I am about the permissibility of private schooling in part because I am inclined to suspect that *some* confiscation of personal wealth by government actors may be permissible under principles no one could reasonably reject. Further specifying

which wealth it is permissible to confiscate sometimes seems more like a practical concern than a theoretical one. However my growing worry is that I am simply biased toward something like the American status quo, where estates have been taxed for decades. Given my current understanding of tax law and economic policy, it is not obvious to me that this kind of government confiscation of wealth is *ever* morally permissible: I am unaware of any principles permitting such confiscation that no one could reasonably reject. Given the alternatives available (sales taxes, mostly, but perhaps also inflationary issuance of fiat currency), the actual losses imposed on people by forbidding such confiscation appear to be nonexistent, though I find myself in the awkward position of asserting a negative. Still, if the government *could not confiscate wealth*, ever, would that be sufficient to harm any interest weightier than the interest we each have in maintaining testamentary control over our assets? I cannot think of one, especially given the small percentage of national revenue the United States currently secures through wealth confiscation. I have a much easier time grasping the permissibility of transactional taxation, to the extent that the interests people have in economic exchange are actually served by the existence of a functioning government; so long as economic regulation serves those interests, the people paying taxes on their transactions could not raise a reasonable objection to financing such regulation. Perhaps it would be similarly appropriate to tax wealth to the extent required to preserve that wealth? Even then, I see no reason why transactional taxation could not secure *all* the revenues necessary for the operation of an appropriately limited government.

My suspicion is that economic claims are ultimately orthogonal to the real concerns of egalitarians advocating for estate taxes. If we *assume* that resource

distribution is in fact an easy problem for which non-economy-destroying, non-government-toppling solutions are in ready supply, and that an inheritance tax will be necessary to satisfy someone's dire need, and that imposing such a tax will not necessitate enforcement activities we are likely to find morally objectionable on other grounds, it would appear to follow that no one could reasonably reject a principle permitting an inheritance tax, even perhaps a 100 percent inheritance tax. I do not think any of these assumptions are warranted, and so my suspicion is that parents have a prima facie right to intergenerational wealth transfers, even though I think a conclusive assertion to that effect would require more economic evidence than I have adequate expertise to furnish. But I also do not think any of these assumptions get at the heart of what estate tax advocates are trying to accomplish. I do not think that the alleviation of "dire need" is the primary goal of such advocates, and even if it were, estate taxes seem like an incredibly ineffective approach to such ends. Rather, it seems to me that their real goal is economic equality.

4. Inequality—or Insufficiency?

In the first section of this chapter, I showed that Brighouse & Swift's account of rights and interest-balancing is compatible with, indeed very nearly identical to, Scanlon's account, making them quasi-contractualists appropriately subject to contractualist critique. The second section examined "familial relationship goods"—an account of, as Brighouse & Swift phrase it, "what is valuable about the family,"[66] which they intend to explain why liberals should not be anti-family (children have the right to enjoy certain kinds of relationships with their parents) while preserving criticism of

[66] Brighouse & Swift, *Family Values*, 11.

putatively inegalitarian practices like testamentary transfers and private schooling (because these things undermine equality in objectionable ways). I suggested that the correct way for Brighouse & Swift to accomplish their apparent aims would be to show that principles permitting testamentary transfer and private schooling can be reasonably rejected. Insofar as the work done by "familial relationship goods" in Brighouse & Swift's account looks like a partial recognition of what I have identified as the moral domain of parenting, what they needed to show was that even if the moral domain of parenting called for parents to value their children through testamentary transfers and private schooling, the moral domain of what we owe to each other forbids such things, because permitting them violates someone's rights—and what we owe to each other has priority. Brighouse & Swift do argue that testamentary transfers and private schooling *result in advantages* to which no one has any particular right, but they never show that testamentary transfers or private schooling, as such, actually *violate* anyone's rights. Lacking a right to some particular advantage is not the same as lacking a right to the practice from which such advantage results; Brighouse & Swift attempt to account for this by proposing that some such advantages can (and should) simply be taken away by operation of law. In section three of this chapter, I conducted the necessary comparison of losses to show that testamentary transfers and private schooling do not violate anyone's rights, and in fact that *interference* with private schooling typically violates the rights of parents and children alike. I also argued that principles permitting estate taxes on grounds that forbidding them subjects individuals to dire need could be reasonably rejected, insofar as it is not estate taxes but government spending generally on which the

alleviation of such needs depends. But my argument against estate taxes remains incomplete, because I set aside the matter of inequality and insufficiency.

I expect that Brighouse & Swift will disagree with all of my conclusions for the following reason: they believe that something we owe to each other, something demanded with priority by the moral domain of right and wrong, is equality. Given prevailing attitudes about the value of equality, it is difficult to fault Brighouse & Swift too severely for assuming, in effect, that equality is something we owe to each other. After all, liberalism itself is often reduced to the slogan, "liberty, fraternity, equality," and legal and political appeals to "equal rights" drive a substantial portion of contemporary American political discourse. I do want to be clear that I am imputing this position to them—both the belief, and its contractualist formulation—but since they self-identify as egalitarians and adopt a quasi-contractualist account of rights, I don't think it is unreasonable to interpret their views in this way. Indeed, if I grant for purposes of argument that equality is something we owe to each other, I think much of Brighouse & Swift's argument succeeds admirably. The way they build equality considerations into their account of familial relationship goods neatly parallels the built-in sensitivity of parenting to the demands of what we owe to each other. If there is a general right to equality, then parenting practices that differentiate childhood experiences surely violate that right.

What contractualism helps to show, however, is that there are in practice *no* general rights—because there is no fixed hierarchy of interests. One must always, in the final analysis, conduct an informal comparison of losses, because that is the only way to fully meet the requirement of justifiability to others. This is something Brighouse & Swift

appear to understand, intuitively if not explicitly, given their helpful labelling of "prima facie" rights, which are just the kinds of important interests that *tend* to be weightiest in those contexts where they typically arise. To claim that I have a *right* to "equal" anything is to claim that I have an important interest in certain things being the *same*, and that this interest is weightier than anyone's interest (including my own) in those things being *different*. It can often seem as though people have such interests, but as Scanlon observes, the "reasons for favoring equality are in fact quite diverse, and . . . most of them can be traced back to fundamental values other than equality itself."[67] I think Scanlon is, in this case, entirely too modest. I have yet to encounter, in the literature or in life, a complaint about "inequality" that turned out to *actually* be about *equality*. So I find myself quite in agreement with Harry Frankfurt's assessment that while

> the pursuit of egalitarian goals often has very substantial utility in promoting a variety of compelling political and social ideals . . . the widespread conviction that equality itself and as such has some basic value as an independently important moral ideal is not only mistaken. It is an impediment to the identification of what is truly of fundamental moral and social worth.[68]

The main contractualist case for appeal to *sufficiency* rather than *equality* is that actual interests in equality are vanishingly rare—perhaps, nonexistent. To reasonably reject a principle permitting some apparent inequality, it must be the case that the losses brought about by that principle are greater than the losses brought about by alternative principles. Some objections to inequality Scanlon identifies are a desire to alleviate suffering, a belief that it is wrong for people to be treated as or made to feel inferior, or

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[67] Scanlon, "The Diversity of Objections to Inequality," 202.

[68] Harry G. Frankfurt, *On Inequality*, 89.

an objection to giving some people an unacceptable degree of control over the lives of others.[69] Others he identifies as related to certain kinds of "fairness."[70] What is odd about Scanlon's treatment of these matters is his steadfast assertion that he does "not mean to attack equality or to 'unmask' it as a false ideal."[71] His primary mistake, I think, is in his belief that these various objections to inequality constitute "*further* reasons for caring about equality"[72] than Frankfurt's "doctrine of sufficiency"—that what is "important from the moral point of view is not that everyone should have *the same* but that each should have *enough*. If everyone had enough, it would be of no moral consequence whether some had more than others."[73] Specifically, Scanlon thinks the doctrine of sufficiency is limited to concerns about the alleviation of suffering; possibly he takes this position since even Frankfurt has historically focused on economic sufficiency as a foil to economic egalitarianism. But more recently Frankfurt has clarified that he "categorically reject[s] the presumption that egalitarianism, of whatever variety, is an ideal of any intrinsic moral importance" and is "convinced that equality as such has no inherent or underived moral value at all."[74]

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[69] Scanlon, "The Diversity of Objections to Inequality," 203–207.

[70] While some such discussion can be found in "The Diversity of Objections to Inequality," it is expanded substantially in Scanlon's recent *Why Does Inequality Matter?*

[71] Scanlon, "The Diversity of Objections to Inequality," 203.

[72] See ibid., 203–204, note 3.

[73] Frankfurt, "Equality as a Moral Ideal," 21.

[74] Frankfurt, *On Inequality*, 65–66.

I agree with Frankfurt; moreover, I think his position follows from Scanlon's contractualism. There are no general objections to inequality. Aside perhaps from the occasional transhumanist advocate for total cybernetic unification of individual consciousness through some yet-to-be-devised technological means, there aren't actually any egalitarians who seek the *elimination* of differences between humans. Since it is not actually *differences* to which egalitarians actually object, but to the objectionable features of certain differences, this is where reasons to reject relevant principles must be grounded. It might be objected that it is certain *kinds* of differences to which egalitarians object, but then the natural question is, why those differences rather than others? Since there does not appear to be any reason to object to difference as such, "equality"—like the "manifesto rights" discussed in Chapter 1—is a term that confuses discourse and tends to get deployed as a way of *asserting* moral urgency without being required to actually *demonstrate* moral urgency.

Scanlon himself falls prey to the phenomenon in his own recent criticism of the relationship between wealthy parents and childhood education. "As things are," he writes, "economic inequality is a severe threat to substantive opportunity, not only because the rich can provide more for their children but also because their political influence blocks the provision of sufficiently good public education for all."[75] If the political influence of the wealthy actually "blocked" the provision of "sufficiently good education for all," that would indeed be objectionable, quite apart from any appeal to "equality." But Scanlon offers no evidence that this is actually so. To the contrary, Americans donate tens of billions of dollars to educational charities every year, with much of this money coming

[75] Scanlon, *Why Does Inequality Matter,* 71–72.

from captains of industry as politically diverse as Bill Gates and the Koch brothers. Furthermore, charitable contributions are only a small percentage of the approximately $1 trillion the United States spends on education annually—more per student than almost any other nation on Earth—and about half of the tax revenue supporting that spending comes from the top 10 percent of American income earners. Of course, it is quite possible that the amount of money spent on education is but loosely (if at all) connected to the provision of a sufficiently good education to anyone. But the point is that, if the political influence of the wealthy *is* in fact blocking the provision of sufficiently good education for all, it appears to be doing so through the perplexingly counterintuitive means of directing astronomical, historically unprecedented amounts of wealth toward the provision of public education, not only locally but globally. And—after all that—Scanlon still uses the word "sufficient" to describe the kind of education to which he thinks children are entitled: not *equal*, but *sufficient*. Why not also say that economic *insufficiency* is a severe threat to substantive opportunity—or whatever? Not only because the poor cannot provide enough for their children but also because they lack sufficient political power to address the issue? This seems like the right sort of reason for rejecting various principles for general behavior. "I do not have enough" seems to carry moral weight that "I am not the same" does not.

In the final analysis, then, it seems to me that the reason Brighouse & Swift reach the conclusions that they do, in spite of having the correct view of rights and interest-balancing, is that they construct their account of "familial relationship goods" with a built-in sensitivity to the demands of equality. It is an understandable misstep; Scanlon himself appears to forget his own contractualism when faced with matters of inequality. I

think that perhaps American culture in the 21st century has reached a point where "because equality is important" is something people are often *likely to accept* as a "reason" capable of justifying a wide variety of activities. I do not think it is *actually* a good reason for much, if anything, but others seem to, possibly because it is presented that way in popular media, institutions of learning, and so forth. It is one third of the liberal slogan, after all. It is, to borrow Frederic Maitland's observation on trusts, so familiar to us all that we never wonder at it. And yet surely we ought to wonder—especially when equality comes into conflict with the values of parenting, values that in many instances appear biologically ingrained in us as a species. Perhaps one way forward is to recognize that equality, like parenting, is its own moral domain? I doubt there is much need for such a moral domain, but then—I am not an egalitarian. Should others see fit to take up the project, I am open to the possibility that there is a moral domain called "equality" and that when its demands come into conflict with the moral domain of parenting, the priority of what we owe to each other might serve to mediate between them. But it is clear to me that equality itself is not something we owe to each other, nor something we should in general allow to interfere with activities that realize the values of parenting.

5. Conclusion

The idea that parents in Western societies are allowed to do "too much" for their children is, at heart, an assertion that parents are permitted to violate the rights of others in the process of raising their children. To the extent that parents *do* violate the rights of others in the process of raising their children, they are not engaged in reasonable parenting. But what, *precisely*, is it that parents are being allowed to do "too much?"

Harry Brighouse and Adam Swift, whose work has garnered substantial public attention, suggest that private schooling and large inheritances may constitute "too much"—and hint that even reading children bedtime stories is something that should bring to mind concerns of unfairness. On their view, "familial relationship goods," like feelings of intimacy or opportunities for spontaneity, justify many parental practices, but only to the extent that those practices are inseparable from relevant feelings of love and belonging. Bequeathing "large" inheritances (on their view, even something as modest as a house appears to qualify as likely too large) and enrolling children in private schooling, they claim, do not qualify, because such practices are primarily about conferring positional advantages on children rather than generating valuable familial sentiments. Brighouse & Swift do not explicitly conduct a balancing of the relevant interests, however, and it seems to me that principles forbidding such practices are substantially more objectionable than principles permitting them. This is in part because the most compelling objections to such principles are that they lead, not to inequality, but to some sort of *insufficiency*—and neither private schooling nor large bequests appear to cause or even especially contribute to objectionable insufficiencies.

On that last point there is, of course, empirical disagreement. Even Scanlon claims—wrongly, I think, and certainly without providing justification—that the political influence of the wealthy "blocks the provision of sufficiently good public education for all."[76] I entertain no illusions concerning my ability to actually change anyone's mind on that score. Nevertheless I expect there is some value in polemic evaluation of publicly notable philosophical argument. What I hope I have adequately defended here is the

[76] Scanlon, *Why Does Inequality Matter,* 72.

position that, on balance, parents have a prima facie right to enrollment of their children in private schools, that testamentary transfer is permissible and likely also a right, and that anyone who wishes to interfere with parents effectively doing these things needs to assemble evidence that principles permitting such activities can be reasonably rejected. But this addresses only half the argument Brighouse & Swift make against parental discretion and authority; the matter of autonomy will be taken up in the next chapter.

CHAPTER 5

PARENTING AND RETROSPECTIVE AUTONOMY

"Individual autonomy," writes Matthew Clayton, "is the ideal of each individual being the author of her own life."[1] Elsewhere, T.M. Scanlon observes that individuals

> generally have good reason to want what happens to them to be affected by the choices they make under appropriate conditions. One reason is that their choices under good conditions (for example, when they are well-informed about the alternatives and able to think clearly about them) are likely to reflect their values and preferences, so the outcomes they choose under those conditions will be more likely to be ones that they will like and approve of. A second reason is that outcomes that result from their choices have a different meaning than outcomes determined in some other way. . . . So one thing that individuals have strong reason to want is to have what happens to them depend on how they react when given the choice under sufficiently good conditions for making such choices.[2]

Conceptions of autonomy play a variety of roles outside moral and political philosophy—in neuropsychology, for example, or debates about determinism or personal identity. Such discussions are not irrelevant to the present inquiry, but for the most part must be set aside, not because they are not interesting or important but because I have absolutely no hope of resolving them to anyone's satisfaction here. Those who think autonomy is an illusion or a false ideal will not be in much position to dispute the primary claim of this chapter, which is that parents have the right to shape their children's values in ways that philosophers of childhood like Clayton, Harry Brighouse, and Adam Swift think impermissible on autonomy grounds. On the other hand, any particular account of autonomy that can be framed in terms of reasons to want what happens to us to be

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[1] Matthew Clayton, *Justice and Legitimacy in Upbringing*, 14.

[2] T.M. Scanlon, *Why Does Inequality Matter?,* 61–62.

affected by the choices we make, under "sufficiently good" conditions, should be broadly compatible with my claims.

In Chapter 4, I argued that principles permitting parents to (among other things) enroll their children in private schooling cannot be reasonably rejected on grounds that they foment inequality, because people don't have sufficiently weighty interests in equality. I allowed that an objectionable *insufficiency* could be grounds to reject such principles, but observed that, empirically, it is unlikely that e.g. private schooling could reasonably be said to cause any particular insufficiency. Scanlon observes that identifying morally relevant considerations for acting as we do (or should) is a "continuing process,"[3] so none of the foregoing precludes the possibility that some *other* interest might be sufficiently weighty to give rise to reasonable rejection of relevant principles. Brighouse, Swift, and Clayton identify autonomy as such an interest. My task—if I am to successfully refute arguments that parents have no right to deliberately shape their children's values (e.g. by enrolling them in private religious schools or teaching them that all religion is superstition)—is to show that a principle generally forbidding parents from deliberately shaping their children's values can be reasonably rejected. I will not accomplish this by denying that people have any particular interest in autonomy, as I did with equality, since I agree that autonomy is an important interest. So I have to show

[3] Scanlon, *What We Owe to Each Other,* 157. Scanlon does not especially develop this point, but because contractualist analysis is sensitive to various facts about people and the world, it is never really *done*. It is almost always at least *possible* that some relevant interest or empirical fact has been overlooked, so no question is ever really closed. This is, I think, a powerful and important feature of contractualism—the observation that wanting to be able to justify our actions to others is not a strictly a matter of theory but often a practical, ongoing process as we routinely engage in social negotiations with others around us.

either that there is some yet-weightier interest to account for, or that deliberate values-shaping from parents does not, in fact, undermine autonomy.

Such an undertaking is complicated in part by the different kinds of autonomy arguments that arise from the question of how children should be raised. One concerns the process of *becoming* autonomous. A major hurdle for any argument dealing with autonomy as it relates to children is that children do not appear to start life with much in the way of autonomy. Two commonly-asserted prerequisites for plausibly autonomous choice are (sufficient) rationality and information, neither of which infants seem to possess in any amount. By the time children can be said to have some capacity for making rational, informed decisions, the way that they have been raised will have already had a substantial impact on whatever psychological framework they have *for* choice. Children, even infants who are unaware of the fact, seem to have a present interest in becoming the kind of person who is the author of his or her own life, and acts that interfere with this present interest—acts that undermine the development of a capacity for autonomous choice—I will refer to as violating children's *diachronic* interests in autonomy, that is, their interest in developing and one day possessing the capacity to be the author of their own life, insofar as such a thing can properly be said to be possible. Physical abuse leading to permanent brain damage sufficient to seriously impair a child's intellectual development would be a paradigmatic violation of diachronic autonomy, but there are presumably a variety of ways to interfere with a child's development of the capacity for autonomy.

A second way in which autonomy relates to the question of how children should be raised is in the nascent autonomy of minors who are sufficiently developed to have

reason to want what happens to them to be affected by the choices they make, but whose actual choices remain immature in ways that give parents and others good reason to interfere anyway. Parental acts that immediately prevent a child from being the author of his or her own life interfere with that child's *synchronic* interest in autonomy. The theorists most explicitly concerned with children's synchronic autonomy are "children's liberationists" who argue that *all* "adult rights are to be extended to *all* children."[4] This claim is, first of all, incoherent on the view of rights I hold, because adults and children typically have (some) different interests, underpinning (some) different rights. Second, much of the liberationist agenda can only be realized with the assistance and direction of appropriate (adult) agents or advisers. The assumption that children's rights must be overseen by guardians of one kind or another is common—especially as discussed in Chapter 3—but it is particularly problematic for children's liberationists who put themselves in the position of essentially re-inventing parental authority while denying the importance of parental authority. Arguing that a child really is the present author of her own life because the practical author of her life has fiduciary obligations toward her is an extremely convenient fiction, but it is definitely a fiction. Responding that the child will be in a good position to approve her agent's actions *later*, meanwhile, is not a claim about synchronic autonomy. Children's liberationism is a view with relatively little academic or advocacy activity occurring today.[5] But while the movement unquestionably raises

[4] See David Archard, *Children: Rights and Childhood*, 66.

[5] One of the few plainly liberationist monographs of the last decade, psychotherapist Elisabeth Young-Bruehl's posthumous *Childism*, includes a bibliographic essay at 299–335 that evidences a spike in children's liberationist literature beginning in the 1970s, alongside other anti-oppression movements, followed by a decades-long plateau or, perhaps, gradual decline. I can only speculate as to why children's liberationism has

interesting questions concerning the lack of seriousness with which adults often treat the expressed present preferences of children, concerns about children's synchronic autonomy nevertheless remain uncommon. Most theorists seem to share the intuition that infants, at minimum, clearly lack a capacity for and, really, any particular interest in synchronic autonomy.

One reason for separating autonomy arguments into synchronic and diachronic varieties is to be clear about the kinds of complaints people might have, or the kinds of justifications that might be offered, in connection with the idea of children being the authors of their own lives. There is a third kind of argument that seems, at times, to blend or perhaps simply confuse synchronic and diachronic autonomy. One version is an argument that adults with *present* objections to their *past* upbringing have had their autonomy violated in some way; another is that the *possibility* a child's adult self might

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never really caught on, while analogous treatments of race, gender, and sexuality have flourished both academically and politically, but I expect a particular phrase plays a significant role. Richard Farson's assertion, in "Birthrights," 327, that children should be afforded "the right to conduct their sexual lives with no more restrictions than adults," has been repeated in some contexts to justify "consensual" sexual relationships between children and adults. In particular, the phrase is repeated in a book defending adult-child sexual relationships written by a criminologist who would, more than thirty years later, himself be convicted of sexually abusing a child. See Chris Pleasance, "Revealed: Paedophile Criminologist Paul Wilson Wanted Age of Consent Scrapped and Defended Child Abusers Saying They 'Look After' Their Victims," *Daily Mail* (26 Nov. 2017), http://www.dailymail.co.uk/news/article-3971690/Paedophile-criminologist-Paul-Wilson-wanted-age-consent-scrapped-defended-child-abusers-saying-look-victims.html. Given that most cultures direct strong legal and social condemnation toward pedophilia, its association in the public eye with children's liberationism seems adequate to explain why children's liberationism is largely dead-letter, whether or not that association constitutes a fair read of the movement's aims. In fact Farson himself makes a sort of knowledge-is-power claim that "children will be best protected from sexual abuse" by acknowledging their right to "all sexual activities that are legal among consenting adults." But even if he is right about that, it is unclear how much the claim's truth would derive from empirical facts about the way sexual abuse occurs, and how much from just an analytic deflation of what counts as "sexual abuse."

develop a complaint about some aspect of their upbringing constitutes a violation of their autonomy. Such *retrospective autonomy*—the idea that adults should in a literal or figurative sense be the authors of their own upbringing—is not, I think, a real autonomy interest. I label the idea here to aid in identifying a problem with certain influential arguments about upbringing, namely, that aspects of upbringing adults retrospectively prefer had been otherwise should not be identified as violations of diachronic autonomy. The primary implication of my claim is that it is permissible, oftentimes even a right, for parents to influence their children's values in deliberate ways. This is something various theorists attempt to deny by appeal to retrospective autonomy, typically by conflating it with diachronic autonomy.

1. Matthew Clayton on Autonomy

Take, for instance, Matthew Clayton, who briefly mentions diachronic autonomy before making an extended argument about retrospective autonomy instead:

> parents are required to educate their child so that she has the wherewithal to lead an autonomous life as an adult. . . . [and] are forbidden from imparting particular convictions to their child or enrolling her into particular associations or practices. . . . [Specifically,] it is morally impermissible for parents to baptize their child or encourage her to believe that religion is mere superstition.[6]

The "wherewithal to lead an autonomous life" I take to be a reference to diachronic autonomy, but whether *particular convictions* are imparted is a separate question from whether one possesses a *capacity* for autonomy. Clayton argues that conviction-imparting approaches to upbringing are impermissible on both normative and instrumental grounds. Like Scanlon, Clayton thinks morality is largely explained in terms of "justificatory

[6] Clayton, "Debate: The Case Against the Comprehensive Enrolment of Children," 353.

burdens," requiring a discussion of the reasons to which parents can "legitimately appeal in justification of their conduct with respect to their children."[7] I will not reproduce Clayton's entire argument here, but the basic outline is that he thinks the parent-child relationship, as a "non-voluntary coercive relationship that has profound effects on the child's life prospects and her self-conception," must be governed by "ideals and principles that do not rest on the validity of any particular reasonable comprehensive doctrine."[8] This is supposed to follow from an approximately Rawlsian account of legitimate paternalism—that, to the extent that they have yet to develop rational preference of their own, we should choose for our children as we would choose "for ourselves from the standpoint of the original position."[9] In other words, on Clayton's view, the only legitimate justification parents can offer to their children in shaping their values are the kinds of justification they could reasonably offer to *anyone,* regardless of their own personal conception of the good. To do otherwise would be to violate children's interest in being the authors of their own lives.

Instrumentally, Clayton thinks that "children should be treated in accordance with norms that will command their retrospective consent or at least will not retrospectively be rejected."[10] This claim is backed by a series of thought experiments intended to demonstrate that it is always objectionable for others to decide "one's characteristics or goals without one's consent or in the absence of confidence of eliciting one's

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[7] Clayton, *Justice and Legitimacy in Upbringing,* 92.

[8] Ibid., 93–95.

[9] Compare John Rawls, *A Theory of Justice*, 249.

[10] Clayton, "Debate: The Case Against the Comprehensive Enrolment of Children," 355.

retrospective consent."[11] Each thought experiment describes an emergency surgery during which a doctor elects to perform additional, arguably beneficial procedures in the absence of prior consent. In the third, descriptively titled *Fertility Fix 2*,

> Claire is rendered unconscious by an accident and is undergoing surgery on her brain and other parts of her body. The surgeon knows that surgery on this particular part of the brain causes patients to form a strong desire to bear children. In the course of the operation the surgeon discovers that Claire is infertile and fixes that as well.[12]

Clayton's intuition is that *Fertility Fix 2* might be morally permissible, provided Claire's newfound inclination toward maternity is an unintentional but unavoidable side effect genuinely known in advance, because she will retrospectively approve of the procedure. In the absence of such knowledge, however, Clayton's intuition is that the fix is not permissible, because "others are not permitted to enroll individuals into comprehensive practices without their autonomous consent. . . . [or] to impart comprehensive convictions to individuals prior to their possession of the capacity for a conception of the good," and the desire to be a parent is presumed a comprehensive conviction.[13] Since children

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[11] Ibid., 361.

[12] Ibid., 358.

[13] Matthew Clayton, *Justice and Legitimacy in Upbringing*, 103. It is not clear to me that positive attitudes toward bearing and raising children can actually be classified as a *conception* of good rather than something that must figure into any complete account of the good. Regardless of whether one would prefer to bear and raise children oneself, the perpetuation of one's community will always depend in part on *someone* bearing and raising children—recall, from Chapter 2, that parenting is *valuable*. The diversity of arguments about hypothetical persons and lives-worth-living is far too expansive to take up here, however it does seem to me that the kinds of comprehensive commitments Clayton thinks it is permissible to impart to children, viz. "liberal" values, would also include childbearing and childrearing among them. Whether Clayton would disagree with me about that, or simply did not consider the further ramifications of implying that a desire for childbearing and childrearing is only one conception of the good, is also unclear. But more will be said in Chapter 6 about the relationship between children, their

initially do not have any particular conception of the good, Clayton concludes, it is wrong to *give* them such a conception, or habituate in them related convictions, because they might eventually develop other conceptions or convictions that are incompatible with their upbringing, preventing their retrospective approval.

In spite of offering both normative and instrumental arguments for his "precondition view" of autonomy, however, Clayton suggests that the prohibitions he has in mind restrict

> parental conduct *that is motivated by adherence to a particular comprehensive view*, rather than particular kinds of parental behavior as such. There is no independence-based objection to taking one's child to church to allow her to witness the nature of Christian worship if one's aim is to develop her capacity to deliberate and act autonomously rather than to participate as a Christian. And . . . parents are also individuals with their own comprehensive interests. The duty to respect their child's independence does not necessarily forbid them from pursuing their own interests even if a side-effect of that pursuit is that their child develops an allegiance to similar projects. It is important to distinguish between conduct that involves the assertion of a right to determine one's child's goals, and activity that, as a by-product, tends to attract one's child to those goals.[14]

In other words, on Clayton's view, undertaking activities that impart comprehensive convictions to my daughter, prior to her possession of the capacity for an individual conception of the good, actually is permissible, provided (1) it was not my *intention* to impart such convictions and (2) doing so does not result in convictions that are "more costly to abandon later in life than if she received a different upbringing."[15]

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communities, and community views to which they do not, or do not yet, subscribe.

[14] Clayton, "Debate: The Case Against the Comprehensive Enrolment of Children," 362–363.

[15] Ibid., 363.

2. Brighouse & Swift on Autonomy

Brighouse & Swift think that Clayton's position is at least partially in error. Specifically, they think that "for most parents to refrain from acting on their own judgments about how to live their lives in their dealings with their children" would be "too costly" because parents cannot in general "simultaneously shield our children from those values and commitments that are central to our identities and share ourselves with them in the way that the healthy parent-child relationship demands."[16] To state their objection in contractualist terms: Brighouse & Swift think that children have an important interest in autonomy, and an important interest in having a certain kind of relationship with their parents. While enforcing our own conception of the good on incapacitated strangers seems likely to impose substantial costs on them in ways that might also apply to our children, *not* imposing our own conception of the good on our children can, at least in some cases, impose *even greater* costs on our children. These costs, measured by Brighouse & Swift in terms of familial relationship goods, are of course not relevant in the case of incapacitated strangers. On Brighouse & Swift's view, Clayton fails to account for all the relevant interests children have in receiving a certain kind of upbringing.

This is not to say that Brighouse & Swift think parents have a general *right* to shape their children's values—or even to bring them to church. It is their position that common approaches to parent-child relationships both foment inequality and diminish autonomy. In connection with autonomy, Brighouse & Swift are especially concerned with "the need to protect children from excessive parental influence, while respecting the

[16] Harry Brighouse and Adam Swift, *Family Values*, 170.

interest that both parents and children have in the right kind of parent-child relationship."[17] What sort of influence qualifies as excessive? Espousing what Clayton calls an "end-state view" of autonomy, Brighouse & Swift identify diachronic autonomy as their main concern, asserting that parents have "a duty to do what they can to ensure . . . that [children] develop the capacity for autonomy."[18] In other words, Brighouse & Swift think that children have an important interest in developing the capacity for autonomy, which places limits on what it is permissible for parents to do.

This appears to satisfy the demands of reasonable parenting, as far as it goes—but what exactly is this "capacity for autonomy?" And what goes into its development, or interferes with that development? Brighouse & Swift list a few requirements for autonomy, as well as some "kinds of belief and preference formation" they find "potentially problematic."[19]

Brighouse & Swift's Positive Dimensions of Autonomy (PDAs)[20]

1. Cognitive ability to reflect on and revise beliefs using a capacity for individual judgment.
2. Emotional capacity to reflect on and revise one's beliefs in a way that is neither overconfident nor underconfident.
3. Sensitivity to when reflection is important and valuable, and when it is unimportant or futile.

[17] Ibid., 149.

[18] Ibid., 150.

[19] Ibid., 164.

[20] Ibid., 165–166.

Brighouse & Swift's Problematic Preference Formations (PPFs)[21]

1. Preferences and beliefs formed by deliberate manipulation via the provision of false information about the options available or the costs and benefits attached to the options.
2. Preferences adapted to apparently unchangeable circumstances.
3. Preferences deliberately accommodating unjust background conditions.

It is not obvious what the precise relationship between autonomy and PPFs is supposed to be, given Brighouse & Swift's view that all three PPFs are "somewhat present in each of our lives"—and are generally overcome by the positive dimensions of autonomy.[22] In fact they think "many of our commitments *must* be formed nonautonomously" and claim that "it is *not* the genesis of one's beliefs and commitments that tells us whether they are autonomous, but *their relationship with one's current judgment*."[23] They do specify that their objection is to preference formation (and, presumably, anything else) resulting in an agent's "inability to reflect on and revise [personal beliefs and commitments] using their capacity for individual judgment."[24] This translates to a claim (contra Clayton) that "raising one's child within one's religion is morally permissible—as long as that is done in a way consistent with the *development* of her autonomy."[25] But since Brighouse & Swift clearly think that PPFs are an ordinary part of every life, it follows that they either think no one is autonomous, or think PPFs are consistent with the development of

[21] Ibid., 164.

[22] Ibid.

[23] Ibid., 165 (emphasis added).

[24] Ibid.

[25] Ibid., 173 (emphasis added).

autonomy. If they believe that people are generally autonomous, they must believe that PPFs are generally consistent with the development of autonomy.

I *suspect* that Brighouse & Swift are trying to claim that PPFs of sufficient severity or quantity are objectionable *because* they interfere with the development of PDAs, but their concrete examples lend no clarity. In fact the most severe case of PPF they identify is in the story of Emily, a woman who decided to leave a fundamentalist faith community even though she felt bad about leaving her family and friends and genuinely feared that doing so condemned her to divine retribution in the hereafter. Concerning Emily, Brighouse & Swift write, "it is hard to believe that her prospective autonomy was adequately protected (even though she ultimately defected and seems capable of extremely thoughtful reflection on her decisions)."[26] The parenthetical aside shows that Emily's case can't possibly support the idea that her diachronic autonomy was violated. Whatever mistreatment Emily endured—however objectionable it was in itself, even perhaps as a violation of her synchronic autonomy—does not appear to have either interfered with her development of the capacity for autonomy, or deprived her of any particular liberty at the moment of choice. It made her feel quite badly about choosing to abandon her community, but "being made to feel quite badly about causing substantial pain to one's family and friends" is not something to which I think a consistent and principled objection can reasonably be raised. There are a variety of circumstances in which causing substantial pain to one's family and friends is likely justified, and yet a failure to feel badly about doing so would surely reflect a failure to appreciate their value. Emily's decision to follow through on her developed preference to leave her community

[26] Ibid., 171.

was certainly made emotionally costly by her upbringing, but given that she was (apparently) raised with the emotional capacity to bear that cost, however subjectively difficult it felt to do so, she can't really be said to have been denied the *capacity* for exercising her individual judgment, or to have become non-autonomous. Certainly she could complain that her decision to leave her community was not made under what Scanlon refers to as "appropriate" or "good" conditions,[27] but that would be a complaint about the *present* condition of herself and her community, not about her past development of some capacity: it would be a *synchronic* autonomy complaint.

One difficulty with identifying concrete examples of non-autonomous humans is that it requires us to assert that someone else must not be the author of their life. It is one thing to say, "Emily, you were raised in ways forbidden by rules no one could reasonably reject," or "Emily, you live in a community that behaves in ways forbidden by rules no one could reasonably reject." It is quite another to say, "Emily, you are not an autonomous human being; you lack the capacity." How are we to actually know that an apparent agent is unable to reflect on and revise their preferences? Brighouse & Swift are surely correct that practices preventing a child from developing into an autonomous adult would violate a rule no one could reasonably reject; the cost to that child's interests would be so high it is hard to imagine any way of justifying such behavior. But the PPFs that appear intended to play the role of "things that are objectionable because they

[27] This presumably means something like "conditions conducive to recognizing relevant reasons and reflecting on their relative weight in a way that allows us to make defensible claims about the justifiability of our actions," though Scanlon does not actually make this very clear. He does mention being well-informed and able to think clearly as examples of good conditions for choice-making. Presumably we can at least sometimes still act autonomously even when conditions are sub-optimal, so long as conditions are *sufficiently* good, but the threshold for this, too, seems difficult to establish.

prevent children from becoming autonomous adults," Brighouse & Swift admit, are in fact broadly compatible with the development of autonomy. The example of Emily reinforces the point: adult humans appear to develop autonomy, in the sense of possessing PDAs, under a wide range of parenting conditions, even including fairly serious abuse and privation. Short, perhaps, of causing brain damage or engaging in extreme (and rare) practices like physical torture, it is unclear how parents could violate children's diachronic autonomy even if that were their explicit goal. Certainly parents are often in a position to render the development and exercise of autonomous choice more *costly*, for example by attempting to instill in children a belief that they should never question their beliefs, or that they should not value their own preferences. But first, there may be good reasons for parents to instill such beliefs in their children, for instance if they live in a world where the likely alternative is for children to become alienated from their community through overweening skepticism or obsessive narcissism. In fact some people who lead lives of relative self-abnegation are quite adept at articulating their reasons for doing so. Second, given the number of children who eventually apostatize from their parents' religion or oppose their parents' political goals, there seems to be very good reason to doubt that anti-questioning or anti-preference beliefs are something that can actually or reliably be instilled in children, deliberately or otherwise.

It might be suggested that the most charitable approach is to interpret Brighouse & Swift as claiming something like the following: for the conditions of making choices as an adult to be sufficiently good that the choice can be correctly described as autonomous, *one* of the conditions must be that the adult did not, in childhood, suffer relevant PPFs in greater number or severity than their acquired PDAs were equal to

accommodating. Since the condition for that single *instance* of non-autonomous choice was set many years before the moment of non-autonomy, whoever was responsible for inflicting those PPFs (or failing to inculcate the requisite PDAs) is responsible for prospectively depriving the chooser of *an* autonomous choice, or even *many* autonomous choices, but *not* of the general ability to revise personal beliefs or the *capacity* for individual judgment. Rather, life is a series of choices, various of which might be individually autonomous or non-autonomous depending in part on an enormous diversity of (among other things) parenting practices that lead to PPFs. Unfortunately this interpretation has the drawback of treating much of what Brighouse & Swift claim about autonomy as mere rhetorical overstatement, since it would be vanishingly rare to lack autonomous choice so entirely that one could be properly said to lack the *capacity* for autonomy. Taking such claims as rhetorical might reflect an acceptable tradeoff if it also aided in the clear practical identification of parenting practices likely to cause PPFs, but hypothesizing a diversity of PPFs does not seem especially helpful in actually identifying what those PPFs are. At most, we could ask individuals, like Emily, whether certain of their life choices proved quite difficult, look for the most likely external causes of those difficulties, identify them as possible PPF-inducing practices, and strive to moderate our own behavior in plausibly responsive ways. But this would face us with an enormous empirical question, massively confounded by the degree to which personal psychological differences in independence or resilience impact perceived autonomy—as well as evolving attitudes about past experiences, which might lead people to *view* present preferences as problematically formed even though, at the moment of formation, no one could have reasonably rejected the principle permitting the preference-forming activity.

3. Retrospective Autonomy

In spite of their criticism of Clayton's position—a criticism I cheerfully endorse!—Brighouse & Swift reach practical conclusions that are almost indistinguishable from Clayton's. Each ultimately denies that parents have any right to deliberately shape their children's values. Their disagreement over the precise contours of what it is permissible for parents to do that *inadvertently* shapes children's values arises in the context of general agreement that parents have no right to *deliberately* shape children's values (beyond such non-comprehensive shaping as might be required for participation in liberal society). Their mutual denial of parental rights is framed in terms of diachronic autonomy. That is, the common objection is *not* that deliberate shaping of children's values violates their synchronic autonomy (for indeed children are often, albeit not always, cheerfully complicit in their own indoctrination or "enrollment"), but that deliberate shaping of children's values—somehow—prevents them from developing a capacity for autonomy. But neither Clayton nor Brighouse & Swift ever actually show this to be true. Instead of giving examples of children whose upbringing prevented them from becoming autonomous adults, they raise examples of adults who have objections to the way that they were raised.

The lure of what I am terming *retrospective autonomy* is easy enough to see. Thinking in terms of retrospective autonomy allows theorists to criticize parental influence while avoiding complicated questions about the temporal disconnect between children's present and future interests. If we want to know what sorts of parenting practices hinder adult autonomy, it seems reasonable to begin by looking for adults who exhibit (or claim to exhibit) arguably non-autonomous behavior or some otherwise

diminished capacity for autonomy, then ask them how they were raised. Or one might consider one's own experience in terms of costs that appear to have been imposed by one's upbringing. Neither of these approaches even requires a robust account of what autonomy *is,* much less any quantifiable facts about what it means for autonomy to be "diminished." All that is required is to find narratives concerning choices that felt hard, or painful, or costly, and sketch some plausible-looking causal arrows between the child-that-was and the adult-now-complaining. "This choice was difficult (or impossible) for me to make, because my parent taught me thus-and-such" does look like a claim about autonomy as it relates to upbringing. But it is clearly not being made by Brighouse, Swift, or Clayton as a synchronic autonomy claim, assuming one's parents are no longer actively intervening in one's adult life. So theorists talk about pre-emptive or prospective autonomy violations and argue that, because children have an important diachronic autonomy interest, it is impermissible for parents to (at least, deliberately) influence children's values in ways that might lead to hard, painful, or costly choices in the future.

But the word "autonomy" has become a moving target. Brighouse & Swift define autonomy as a combination of cognitive ability, emotional capacity, and practical judgment, but describe its absence in terms of being faced (in adulthood) with emotionally costly choices, regardless of one's actual ability or capacity to endure such costs. Clayton defines autonomy as a matter of self-determination, but describes its absence in terms of retrospective consent. What is peculiar about these accounts is that their theoretical concerns are clearly expressed in terms of diachronic autonomy, but the examples and thought-experiments on offer are limited to clearly autonomous adults raising retrospective objections to their upbringing.

That is: Brighouse, Swift, and Clayton think children have an important present interest in becoming autonomous adults. I agree! They also think that deliberately shaping children's values interferes with their becoming autonomous adults, if not entirely, then by making certain choices more painful or costly. But there are many choices that *should* be painful or costly, even when they are justifiable, and the difference between permissible and impermissible parenting activity here seems in most cases to hinge on whether that activity is objectionable on other grounds than autonomy. Assuming it is possible to torture someone in such a way that they actually lose the ability to make certain choices autonomously, that would be good reason to reject a principle permitting torture. It's just that torturing people is impermissible quite apart from any autonomy concerns it raises—and the kinds of arguments commonly raised concerning autonomy seem to follow that pattern. To support the claim that deliberate values-shaping, *absent* activity that is objectionable on other grounds, undermines the development of autonomy, Brighouse, Swift, and Clayton all rely on retrospective complaints about the extent to which certain choices felt more difficult or costly as the result of a given upbringing. But these are not arguments about diachronic autonomy at all. They are not about developing a *capacity for autonomy*. They are objections to something else.

Consider a series of hypotheticals concerning rights to physical property. Suppose I own a piece of real property, and I cut down all the trees growing there. If I later gift you this property, but you don't like the lack of trees, you can hardly be said to have a complaint against me. Next imagine the case where I hold the land in trust for your benefit. In this version, I think the trees should all be cut down; as established in Chapter

3, whether or not it is permissible for me to cut them down will depend on the terms of the trust, not on whether there is some chance that you will later wish I hadn't done so. Finally consider the strongest case, wherein you own a piece of property in fee, and I cut down all your trees. Whether my doing so was permissible will depend on the justifications that I am able to give you. Generally it would not be permissible for me to cut down trees belonging to you, but there might be a variety of plausible explanations for doing so—perhaps there was a forest fire and your trees were cut down as an emergency measure. Regardless, if your present interests were given insufficient weight, or if I cannot otherwise reasonably justify my actions to you, then I have wronged you; you have a complaint against me. But if, fifteen years from now, you develop a sudden and novel desire to construct a house, and then realize that doing so is going to be harder than you'd like because fifteen years ago some mad philosopher cut down all your trees, it would make no sense to say that I had *prospectively* wronged you. It would be unreasonable to come to me and demand that I justify my choice to make it harder for you to build a house. Your complaint against me, if you have one, arises when I violate your rights, not when events unfold such that my past actions turn out to have created present difficulties. In none of these hypotheticals is there a point at which I can actually be said to have prospectively violated your rights; either I did or I did not violate your rights when I acted, so the way you might *later* feel about (say) proximately-imposed costs can only be considered *retrospectively*.

Concerns about upbringing and the development of autonomy follow the same pattern. A parent who *in fact* violates a child's present interest in becoming an autonomous adult—their present diachronic autonomy interests—violates the first prong

of reasonable caregiving by engaging in behavior disallowed by a set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement. But to *actually* interfere with a child's development into an autonomous adult appears substantially more difficult than it is sometimes made out to be. This is particularly evidenced by the way theorists writing about diachronic autonomy appear almost always to resort to retrospective autonomy when furnishing concrete examples. A parent who behaves in ways that no one could reasonably reject *now* cannot possibly be violating anyone's rights, even if events unfold such that their children have reason to regret their upbringing at some later date. A sincere claim that "I did not know, and had no reason to suspect" is one we ordinarily accept as legitimate reason to not view others as morally blameworthy. Restated in Scanlon's terms, Brighouse, Swift, and Clayton are claiming that we can reasonably reject a principle for the general regulation of behavior that permits shaping the values of children in ways that they *might later* come to reject (with the apparent exception of non-comprehensive liberal values). To this Brighouse & Swift add that children's interest in certain familial goods at least sometimes outweighs their interest in diachronic as well as retrospective autonomy, but when it comes to practical concerns this does not appear to distinguish their position from Clayton's. None of these theorists successfully makes the case for rejecting principles permitting the deliberate shaping of children's values, because the reason they think such rules can be rejected is that deliberate shaping of children's values violates children's interests in diachronic autonomy—it *prevents* children from developing into autonomous adults. But retrospective complaints are not actually evidence that one's diachronic autonomy interests have been violated.

4. Autonomy and Enculturation

Is there reason to reject the alternative principle—one forbidding the deliberate shaping of children's values in "comprehensive" ways? In fact we all have a variety of reasons to want the values and preferences we actually have to reflect, not only our own judgment, but also the judgment of others. We have reason to adopt the judgment of experts on matters in which we are not expert. We have reason to prefer political systems and personal lifestyle choices that history has shown likely to yield desirable outcomes for individuals and societies. We have reason to value things that are valued by people in our families and communities. And perhaps most importantly, the way that we value our own children gives us a variety of interests, as parents, in their upbringing. What interests do parents have in taking their children to church, or enrolling them in parochial schools, or teaching them that religions are all superstitions, or other activities *intended* to shape children's values? One, I think, is simply an interest in living according to the tenets of one's religion; people who believe that God requires them to raise their children in a particular way certainly have an interest in doing so. But another interest people have in passing their values to their own children is grounded in the fact that we live in a world where parents who do not give their own children some conception of the good are likely to find that someone else is willing and anxious to do so, with rather less regard for that child's own interests than a parent will tend to show.

That is—suppose Clayton, Brighouse, and Swift are correct, and sending children to parochial school or teaching them that all religion is superstition is likely to result in their adoption of a particular conception of the good, one they may eventually come to regret having acquired. This is posited as a reason to reject principles allowing parents to

deliberately shape children's values by engaging in values-shaping activities. If such activities really do shape values in this way, surely public education does, also—or, for that matter, video games and television programming. In fact the number of people in the world quite anxious to deliberately shape children's views on every conceivable matter—peers, churches, schoolteachers, political parties, interest and identity groups, drug dealers, corporations, clubs, the list seems endless—makes it very unlikely that any particular child could possibly reach adulthood without having their values deliberately shaped by *someone*. Brighouse & Swift think that such influences might even result in children becoming non-autonomous:

> A public culture that emphasizes instant gratification, and in which large sums are spent promoting materialism and shaping teens' and young adults' perspectives on sex, places considerable demands on parents. Given the difficulty of the task, parents should *try to ensure* that their children become autonomous. This formulation implies that the pursuit of the child's prospective autonomy must be quite self-conscious, but allows that a parent may fulfill her duty even though, owing to factors outside her control, her child does not in fact become autonomous.[28]

I have already argued that this is not quite right, insofar as the general capacity for autonomy does not appear to be so easily destroyed, even if some particular choices end up being made in arguably non-autonomous ways. But Brighouse & Swift do identify a serious concern, namely, that one way to value our children is to see ourselves as having reason to counter bad influences on their developing values. Their answer appears to be that parents should emphasize the development of PDAs, but what exactly is the process for teaching children how to reflect on and revise their beliefs, if one is forbidden from beginning by deliberately sharing the beliefs that one has with one's children? Recall that

[28] Brighouse & Swift, *Family Values*, 168.

Joel Feinberg's response is to acquaint children "with a great variety of facts and diversified accounts and evaluations of the myriad human arrangements in the world and in history."[29] Clayton, Brighouse, and Swift all seem to basically agree, insofar as they are prepared to allow children to *inadvertently* acquire values from the example of their parents—and, apparently, anyone else who happens by.

But to approach parenting in this way would violate requirement 2.a of reasonable parenting. Recall from Chapter 2 that parents are obliged, by the domain of parenting and what we owe to each other, to furnish their children with a community-appropriate moral education—most importantly, a grasp of the justifications for action that they and others in their community are likely to accept or reject. If I have engaged in any reflection at all concerning my values, I am in a better position than my children to identify what sorts of things they ought to value, and I owe it to them to impart such wisdom as I'm able: to *act* on my children's moral education, not to *react* to the moral education they happen to pick up along the way. Subjecting them to the process of *enculturation*—giving them a meaningful "insider" understanding of community and cultural values—is an important and effective approach to protecting them from having their values shaped for exploitation by others. It is something I have an important interest in doing, and something my children have an important interest in having me do.

Central to the process of enculturation is the moral education of coming to understand the "reasons that other people accept."[30] Scanlon identifies three good reasons for acquiring such a moral education:

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[29] Joel Feinberg, "The Child's Right to an Open Future," 139.

[30] See Scanlon, *What We Owe to Each Other* 74.

1. Because others might be correct and we might learn something from them.
2. Because others may represent an emerging consensus that will affect us.
3. Because the continuation of the common life of our community may be threatened.

All of these reasons are closely tied with the idea of coexistence, since both our willingness and ability to coexist with one another will depend in part on having some substantial overlap in the reasons we accept. They also track the interest we have in cultural reproduction—a phrase that tends to imply the enculturation of others, but most especially the fruits of our own biological reproduction. Anyway the continuation of the common life of our community is something that parents should not be prevented from taking reasonable steps to achieve. So long as the cost to others of allowing people to enculturate their children is acceptable, parents have a right to do so. The various objections of Brighouse, Swift, and Clayton are claims that the cost to children of allowing parents to deliberately shape their children's values is *unacceptable*: it deprives children of autonomy. But they fail to ever show that this is actually true. In fact I think, for the many reasons discussed in this chapter, it is *clearly false*. Because parents have reason to reject a principle forbidding the deliberate shaping of their children's values, and because doing so does not actually prevent children from developing a capacity for autonomy, parents can generally be said to have a prima facie right to deliberately shape their children's values. This does not mean parents have a general right to deliberately shape children's values *by any means they happen to prefer*; the permissibility of any particular values-shaping activity will always depend on its compatibility with relevant rules no one could reasonably reject. Rather, because deliberately shaping children's values does not by that fact alone violate anyone's present interest in developing into an

autonomous adult, the fact that an activity is deliberately values-shaping is *insufficient* to show that the activity is impermissible.

5. Conclusion

In its most basic formulation, the central claim of reasonable parenting is that parents should behave in accordance with rules no one could reasonably reject. If they do, they have a prima facie right, in the parlance of Harry Brighouse and Adam Swift, against interference in raising their children in accordance with their personal values. Of course, while it should be sufficiently clear by now as to require no further repetition of the point, it doesn't hurt to mention that, on the account of rights I find most persuasive, various facts about people and the world we live in might intervene in the analysis in ways that alter the conclusion. I have done my best to show how the facts Brighouse, Swift, and Clayton raise in support of their positions are inadequate to show what they are intended to show, but it must be allowed that other facts of which I am presently unaware could save their arguments in various unforeseeable ways.

With that caveat always in mind, it seems clear enough that parents have an important interest in the enculturation of their children—in giving children a meaningful understanding of community and cultural values by communicating their accumulated wisdom. Children have an important interest in learning such things from their parents. In Chapter 2, I observed that reasonable caregivers are obliged to furnish their children with a moral education, because a principle allowing parents to neglect such education could be reasonably rejected both by other parents and by affected children. Theorists like Brighouse, Swift, and Clayton argue for a variety of limitations on the moral education of children, grounded in the idea that giving children comprehensive commitments or

deliberately shaping their values prevents them, somehow, from becoming autonomous adults. But their normative arguments fail to adequately account for all the interests at stake, while their instrumental arguments confuse diachronic autonomy violations—in which parents interfere in the development of children's autonomy—with retrospective "autonomy" violations. These retrospective autonomy complaints arise when adults who appear to be as autonomous as anyone else nevertheless couch complaints about the way they were raised in terms of autonomy. But complaints about one's upbringing developed in adulthood are not the kinds of complaints that matter from a contractualist perspective, which prioritizes the ability to justify our actions to others. Parents can only act, in the moment, on reasons that are accessible to them in the moment, and parents have great reason to deliberately shape their children's values, including their children's conception of the good. Not only is it in the interest of cultural reproduction, but also in the interest of protecting children from having their values shaped, overtly or surreptitiously, by people who do not properly value them.

I anticipate that the strongest objections to my position are most likely to arrive in the form of thought-experiments about bad parents. What about children raised in less respectable religions, or genuine cults? What about children who are raised to be racist, or violent, or otherwise objectionably anti-social? In short, what about parents *who do not properly value their own children*—as evidenced by the ways they violate their children's rights, including (but by no means limited to) their failure to provide those children with an appropriate moral education? Surely there is a limit to what parents are permitted to do? Of course there is. One of the most important features of Scanlon's contractualism and view of rights generally is precisely that it can identify such limits without resort to

dubious claims about retrospective autonomy or raising children without deliberately shaping their values. By considering the interests various parties have, and weighing those interests against various alternatives, I expect we can identify many ways in which it is permissible for people to interfere with—and contribute to—the upbringing of children not their own. The role of community in upbringing is the subject of the final chapter of this project.

CHAPTER 6

PARENTING, PUBLIC POLICY, AND THE "COMMON LIFE"

When, and to what extent, are non-parents justified in interfering with existing parent-child relationships? The paradigmatic example of such interference, and the one on which I will focus in this chapter, is the adoption of laws that interfere, in various ways, with upbringing. Extant philosophical discussions of upbringing tend to approach parenting with suspicion, framing inquiry with questions of approximately the form, "what makes parenting in general legitimate?"[1] But answers to that question don't constitute a complete account of relevant permissibility without additional consideration of a question like, "what makes *interference with parenting* legitimate?" In Chapter 2 I discussed how the biological fact of parent-child relationships, in light of what we owe to each other as outlined in Chapter 1, grounds various responsibilities and attendant parental interests in fulfilling those responsibilities, interference with which can constitute a violation of parental rights. Among those, as further examined in Chapter 5, is the right and responsibility to enculturate one's children, that is, to provide them with a moral education suitable to participation in the life of their community. But not all parents live up to their responsibilities, and in addition to being valued by their parents, children are valuable as present and future participants in what T.M. Scanlon calls our "common life." Because non-parents can benefit in various ways when their community has children enculturated into it, non-parents can be said to have some interest in the upbringing of other people's children. What philosophers asking after the "legitimacy" of

[1] See for example Anca Gheaus, "The Right to Parent One's Biological Baby," 432.

parenting really want to know, I suspect, is the conditions under which the various interests non-parents have in the character and continuation of their community are weightier than the interests parents have in directing their children's upbringing—that is, when non-parents are justified in interfering in relationships established by the acquisition or assumption of parental responsibilities. I do think some principles forbidding community interference with parent-child relationships can be reasonably rejected—albeit not in the ways that various contemporary scholars tend to claim. Some such claims have already been examined, in Chapter 4 and Chapter 5, but the fact that Harry Brighouse, Adam Swift, and Matthew Clayton are mistaken in their particular assertions does not mean there aren't other ways for communities to permissibly intervene in parent-child relationships.

I offer in this chapter a discussion of such issues that is, inevitably, incomplete—there always seems to be more relevant information available for consideration than it is possible to actually consider. Nevertheless something should be said about the ways that communities value children, and how to compare the losses posed by various principles for the regulation of community behavior in connection with children. Some of these losses will be explored in particular via discussion of a recent effort by Danish policymakers to enculturate the children of Muslim migrants into the common life of Denmark. Along the way I will make frequent reference to the idea of community interests or values, but this is not intended as a personification of communities or an aggregation of individual interests. All I mean by community interests or values is the interests or values that individual members of a given community share, or at least substantially share, in common.

1. The Value of Children to Communities

In distinguishing between the valued and the valuable, Scanlon suggests that it is "natural to say, and would be odd to deny, that I value my children; but it would be odd for me to put this by saying that they are valuable (except in the sense that everyone is)."[2] What he means by this, as discussed in Chapter 2, is that there are non-generalizable reasons to value our children. While this is certainly true, in making this point Scanlon overlooks something significant about children, namely, that they *are* valuable, *not* in the sense that everyone is, but in a generalizable way. This is why, in my treatment of the valued and valuable, I suggested that others in general have no reason to value my children any differently than they would value *any other stranger's children*. Recall that, for Scanlon, to

> value something is to take oneself to have reasons for holding certain positive attitudes toward it and for acting in certain ways in regard to it. Exactly what these reasons are, and what actions and attitudes they support, will be different in different cases. They generally include, as a common core, reasons for admiring the thing and for respecting it, although "respecting" can involve quite different things in different cases. Often, valuing something involves seeing reasons to preserve and protect it . . . .[3]

By contrast, to "claim that something is valu*able* (or that it is "of value") is to claim that others also have reason to value it, as you do."[4] The domain of parenting is concerned with the moral rights and obligations of parents in connection with the ways in which they value their own children—that is, the reasons particular parents see themselves as

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[2] T.M. Scanlon, *What We Owe to Each Other*, 95.

[3] Ibid.

[4] Ibid.

having for their attitudes and actions toward their children. But we also value children in a more general way that is neither the way in which parents value their own children nor the way in which we value everyone. We all have reason to value children as the unrefined material (so to speak) of communal perpetuation and construction. Valuing life in our communities often means, in part, valuing children: taking ourselves to have reason to protect children and enculturate them into our communities.

Not everyone thinks we have such reasons, or at least that it is obvious that we have such reasons. This may be in part because some communities are not especially *meant* to persist beyond the lifespan of any current members; for example, a particular group of friends may constitute a community of certain shared values that has little or no reason to induct new members over time. The apparent non-obviousness of the value of children to communities may also result from the fact that the reasons we have to enculturate children into communities that *are* meant to persist typically grow weightier as the communities we care about, and to which we belong, grow smaller. As Scanlon observes,

> We all enjoy relations with others that are based at least partly on our appreciation of the same values, and when we come to differ in the interpretation of these values, or in the importance to be placed on them, these relations are threatened. I can no longer participate wholeheartedly in our activities if I no longer see them as important, or if I think that the rest of you are completely misguided in your ideas about how they should be pursued.[5]

One practical implication of this and related passages is that when we belong to populous communities, we have relatively little reason to be concerned about the loss of this kind of relationship. This is because the loss of one community member out of a great many is

[5] Ibid., 76.

unlikely to prevent continued participation in "our" activities, unless they happen to be someone who plays a special role for either the community or for us individually. But even at the level of being a citizen of a vast and populous nation, we still tend to act in ways that evidence our taking ourselves to have reason to protect the children of our community and enculturate them with relevant values, inducting them into the community. Perhaps the most obvious present evidence of this value is the public funding of children's primary education that occurs in all but a handful of countries worldwide, and the billions of dollars' worth of additional philanthropic aid devoted to such efforts every year. While much is made of the importance of having literate and numerate populations, it remains that substantially less (albeit admittedly not zero) effort and attention is devoted to addressing the illiteracy and innumeracy of hundreds of millions of *adults* around the world. Aspire as we may toward a world of universal literacy and numeracy, it is not *primary education* but the *primary education of children* to which the overwhelming majority of educational resources are directed.

There are a variety of facially plausible practical explanations for this trend. For example, the "return" on educating children is likely much higher than on educating adults; teaching a 5-year-old how to read cascades into further opportunities that a newly-literate 65-year-old is unlikely to be afforded (or, for that matter, interested in pursuing). Or the cost of educating children to a certain standard, both in terms of capital and in terms of effort, may also be much lower than it is for adults.[6] And some illiterate or

[6] At least with regard to language and literacy, it is commonly believed that children naturally learn more quickly than adults, possibly by virtue of a period of biological sensitivity. Recent inquiry suggests that children *might* actually learn faster simply by

innumerate adults presumably prefer to *not* be more educated than they are, in ways that cannot be addressed without objectionably paternalistic intervention. But such explanations are substantially *post hoc*, insofar as they are not the kinds of reasons people generally give for creating systems of publicly-funded primary education for children (specifically) in the first place. Rather, the public funding of childhood education has historically been justified first and foremost by the claim that education *creates better citizens.*[7] Whether primary education as presently constituted actually accomplishes this, and whether it does so with anything approaching reasonable efficiency, are interesting (and open) questions. But the implementation of policy shielding children, and children alone, from any productive labor beyond government-subsidized intellectual self-improvement is clearly to treat children as valuable in a way that not *everyone* is treated as valuable.[8]

Perhaps it will be suggested that in fact everyone *is* valuable in this way. Maybe it is only (say) scarcity of resources that prevents us from allowing just anyone to dedicate

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virtue of having more free time and motivation. See Nienke Meulman et al. "Age Effects in L2 Grammar Processing as Revealed by ERPs and How (Not) to Study Them."

[7] As Thomas Jefferson influentially observed, "Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe their minds must be improved to a certain degree." *Notes on the State of Virginia*, 206.

[8] Someone might think we should publicly finance primary education not because we care about the future of our community, but simply because it is good for children's welfare that they be educated. But again: this is a reason that can be generalized to everyone, and so it fails to explain why we particularly value *children* in this way—unless someone wants to assert that it is good for children to be educated, but not for adults to be educated, which would be a sufficiently puzzling perspective that I am unsure of the appropriate response.

their lives to personal academic improvement at public expense.[9] Allowing everyone to spend their childhood thusly engaged might just happen to be one way to distribute such opportunities as society is able to afford. While I am unaware of anyone actually making such an argument, it is true that in recent years the United States has seen increased political interest in the implementation of tuition-free (i.e. 100 percent taxpayer-funded) higher education for, apparently, everyone. This might well be the consequence of people coming to see the value of educating children as merely derivative of the more general value of educating everyone. But even if this is so, it still would not explain why children are so often styled as having a right to free, *compulsory* primary education,[10] for which there appears to be no analogous political interest touching on higher education, nor why the right to education so often manifests as a legal right with an age limit.[11] Likewise assertions that children must be educated to satisfy some equality or autonomy interest would presumably apply just as well to illiterate or innumerate adults. In those rare cases

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[9] In the United States, at least, it is of course true that everyone is permitted to dedicate their lives to such personal academic improvement *as their own time and resources permit*, but that is why it is important to not elide the clause, "at public expense." There are a handful of adult lifestyles that approximate the public education paradigm, but even these are qualified in ways that rarely, if ever, apply to children. Research professors at public universities (or publicly-funded private universities) are, tenure notwithstanding, not typically *entirely* free from the demand that they make some contribution to their field. An adult who lives on government welfare and makes extensive use of public libraries might also fit the description of someone who has dedicated their life to personal academic improvement at public expense, but as far as I know, we do not allow just anyone to live indefinitely on government welfare, either.

[10] See for example the Convention on the Rights of the Child, 20 Nov. 1989, 28 ILM 1448, art. 28.

[11] For example, article 11, section 6 of the Arizona Constitution reads in part, "The legislature shall provide for a system of common schools . . . which . . . shall be open to all pupils between the ages of six and twenty-one years."

where the law does mandate adult education—language education for citizenship, for example, or continuing education for professional licensure—it is usually at their own expense and/or to secure privileges that not everyone has reason to secure. The *compulsory* education of such adults is not something for which anyone appears to be seriously advocating.[12]

I don't wish to belabor what will seem, to many, an obvious point, but I do want to cut off any objection that maybe we *don't* value children-not-our-own in ways that others also have reason to value them, or in ways that we don't also value adults. I want to make it as clear as I can that Scanlon's failure to recognize children as uniquely valu*able* represents a substantial omission. Very probably, it was an inadvertent omission, since children do not appear to be valuable in connection with communities that aren't intended to persist beyond the deaths of constituent members, and there doesn't appear to be any reason to think that Scanlon would reject this corrective on the claims he makes in *What We Owe to Each Other*. Nevertheless, it is an important corrective, given that what Scanlon explicitly claims concerning the value of children is clearly mistaken. Historically, humans have attended to the education and enculturation of children with great interest. Ancient cultures viewed it straightforwardly: raising children well is what must be done if we are to have worthwhile adults in our community.

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[12] The closest case I am able to find is a recent proposal to introduce compulsory adult education in certain Nordic nations, some of which already offer subsidized (not free) courses in primary- and secondary-education subjects. See Anne Quito, "Nordic Politicians Are Debating Making School Mandatory for Senior Citizens," *Quartz* (10 Jul. 2016), https://qz.com/724166/nordic-politicians-are-debating-making-school-mandatory-for-old-people/. The proposal does not appear to have led anywhere, however, and in any event focused on the economic interest in updating job skills, not on the "citizen-building" arguments so commonly made in favor of compulsory *childhood* education.

"Train up a child in the way he should go: and when he is old, he will not depart from it"[13] is literally Proverbial, words attributed to Solomon the Wise. There is also Aristotle: "It makes no small difference . . . whether we form habits of one kind or of another from our very youth; it makes a very great difference, or rather *all* the difference."[14] Even the ancient Roman *word* for "children" identified their value as future participants in the community life:

> The most common [Roman word for children], *liberi*, is associated with the concept of *libertas*, "freedom," not in our western liberal sense of being independent of others, but in the sense of being a member of the (free) community . . . . The *liberi* were on the one hand those junior members of a household who were free, as opposed to the slaves, *servi*; and on the other hand a collective group of free-born Roman boys and girls, contrasted with adults of citizen status. They were the future citizen community.[15]

Some recent empirical inquiry downplays the influence of upbringing to focus on genetic or alternative sociological factors, but it remains the case that, for example, a majority of children adopt the religion of their parents,[16] and frequently their parents' politics as well. In other words, one reason we have to attend to the raising of children is that we want them to become a certain kind of adult, and yes, their upbringing appears to make some meaningful difference. While parents have further, individual reasons to attend to the raising of their own children, "we want children to become certain kinds of adults" is a

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[13] Proverbs 22:6 (KJV).

[14] *Nicomachean Ethics,* II.1, 1103b24–25.

[15] Thomas Wiedemann, *Adults and Children in the Roman Empire*, 32. It is additionally interesting that, as the concept of *citizenship* lost its currency in the late republic, the word *liberi* also faded from central use. Ibid. at 33.

[16] See generally Vern L. Bengtson, *Families and Faith*.

reason that is generalizable. Something valu*able* about children is that they have tremendous potential to become members of our communities and cultures, a potential that already-acculturated adults seem to possess in much smaller measure.[17]

Consider the narrow case of language acquisition, a case so universal that it is often overlooked. The transmission of language is a basic form of enculturation, perhaps the *most* basic. This is especially so if something like the Sapir-Whorf hypothesis (that language structures perception) turns out to be true, but it is unnecessary to undertake complicated epistemological inquiries to see the extent to which language matters in our lives. The importance of language is immediately apparent in any attempt to apply Scanlon's contractualism in a practical context, through the central role played by the desire to be able to justify our actions to others. Of course, in the abstract, one always has some *theoretical* ability to justify one's actions to others insofar as one acts in accordance with principles that no one can reasonably reject. But in practice, the ability to justify oneself to others implies a capacity for communication with them. Likewise, actually

[17] This is not to say that adults entirely lack the potential to become members of communities to which they do not already belong. Although some communities do not *permit* non-native induction, adults do sometimes join new religions, learn new languages, get new jobs, and move to new places. Integrating oneself into a new community as an adult, however, tends to involve a process of reconciling one's existing values with those of one's adopted community. This process often demands a great deal of compromise and mutual toleration, if it is to be at all successful, and in many cases it is a process that is never quite convincingly completed. This is something that secular urban and suburban citizens of wealthy nations sometimes overlook, living as they tend to do in geographic and social communities with relatively high turnover (so to speak), where community dynamism minimizes the practicality of robustly shared values. But there are still places in the world where epithets like "newcomer" and "move-in" are routinely applied to individuals with decades of community membership, and religious converts often refer to themselves *as* converts even when they are octogenarians whose conversion took place in adolescence. *Native* community membership carries so much weight in some contexts that it becomes a jealously-guarded status signifier.

attending to the values others have (something Scanlon thinks we have a variety of reasons to do) will be difficult, perhaps impossible in the absence of communication: attending to the values of others is substantially facilitated by the existence of clear ways to learn what those values are. So we have very good reason to prefer to live in communities where we are able to communicate with others, and to acquire new language skills when we find ourselves in communities where we are not able to communicate. To the extent that infants have no language and are in no position to acquire it independently, any desire we have to coexist with them over time is a reason to teach them how to communicate with us, even if we are not their parents.

But children cannot learn *every* language, so the existence of more than one linguistic community means that children inevitably acquire their primary language or languages against *someone's* interests—though any interest a speaker of (say) Spanish has in having some particular Russian child also learn Spanish is surely extremely slight. Furthermore, even though being multilingual comes with measurable cognitive benefits, it appears to do so at the cost of fluency: empirical inquiry suggests that monolingual children tend to acquire more vocabulary in their one language than bilingual children acquire in either of their two.[18] Assuming that being multilingual is still in general preferable, for whatever reason, to being monolingual, even the most remarkable of polyglots can speak only a small fraction of total human languages. So the first, along perhaps with the second or third, language a child learns will substantially influence how their life goes: the opportunities they have for economic exchange, education, friendship,

[18] Jose S. Portocarrero, Richard G. Burright, and Peter J. Donovick, "Vocabulary and Verbal Fluency of Bilingual and Monolingual College Students," 415.

romance, understanding others, and simply *being understood* are strongly contingent on the number of people with whom it is possible to pursue these things. While language barriers are not an absolute bar to any such pursuits, they unquestionably constitute a significant impediment. Every member of a linguistic community has some interest in having others learn their language, so that their linguistic community can continue to enjoy a common life and so that they can each individually have good opportunities to pursue romance, work, and so forth.[19]

When it comes to common living, language is the tip of the cultural iceberg—or perhaps it would be more accurate to call it the foundation of a substantial edifice. To be richly understood by others, much more than language alone must be shared. A child who grows up excitedly anticipating a bar mitzvah or quinceañera acquires something in common with parents, relatives, friends, and neighbors who cherish memories of their own coming-of-age ceremonies. A child who participates in family traditions, religious rites, and cultural celebrations comes to value the things that their community values, even if those things are not universally valuable. And if, as adults, they come to *reject* those values, there will be people who are sorry about that, but children who do *not* participate in such traditions and ceremonies and celebrations are denied the opportunity to enjoy robust membership in their community. So there is good reason to transmit various of our values to children, including children not our own, both so that we can enjoy a common life with them and so that they can enjoy a common life with us. Not

[19] There is a rich literature on "linguistic rights" of which I do not give a detailed account here—in part because such rights are often asserted as manifesto rights, rather than moral rights. But readers hoping for a more detailed discussion of the moral and political importance of language might consult Will Kymlicka and Alan Patten's *Language Rights and Political Theory*.

every community will have such reasons in equal measure, and some people will presumably have other reasons to *not* participate in this process, but basically everyone belongs to *some* community they have reason to perpetuate, even if they do not recognize or act on those reasons, or have other, overriding reasons against participating in the processes of reproduction or enculturation. Among other things, these reasons motivate public policy aimed at protecting children, educating them, providing them with adequate sustenance, and so forth.

Pointing out that children cannot learn every language is just one example of the broader observation that children cannot be members of every community. The diversity of communities renders the ways in which we value children similarly diverse, and how that plays out in practice ultimately depends on how the interests and values of parents, children, and the community can be balanced. A mother who grows up speaking English in the United States, but immigrates to Mexico as an adult, may put a premium on ensuring that her children speak fluent Spanish, enculturating them into the most geographically-influential linguistic community even though this might in some ways deprive her of a measure of common life with her children. Conversely, the citizens of Mexico might value cultural diversity in ways that lead to various accommodations for immigrants who only speak English, rather than attempts to encourage linguistic integration. This would have the effect of privileging one kind of common life (in this case, the enjoyment of cultural diversity in a certain geographic area) above others (like a shared national identity that includes a common language). In order to determine the correct approach to such choices, communities, like parents, must consider not only how it is that children should be valued, but also what we owe to each other.

2. Burdening the Interests of Parents, Children, and Communities

That is to say, community members, like parents, must act in accordance with rules no one could reasonably reject. The ways in which we value our own children is relevant to their moral development (and more), since part of valuing our children properly requires recognition of our responsibility to furnish them with a moral education. Deficiencies in that moral education will interfere with children's ability to coexist with others. But valuing the children of others as nascent members of our community also means taking ourselves to have reasons to interact with them (and their parents) in ways that it would be strange to call "upbringing." What we owe to *each other* is relevant to the relationship between parents and children, but also to the practical questions that arise when any particular child is valued by different people in different ways. Such questions are often deployed as rhetorical objections to the assertion of various children's and parents' rights: "What about child abuse?" "What about bigoted parents?" "What about children whose eventual adult values come to conflict with their received enculturation?" What such questions tend to have in common is a suppressed premise that *some* children are not being *properly valued*, for example by having their rights violated. Indeed, sometimes children *aren't* properly valued. But sometimes the problem is instead that relevant values have come into *conflict*. When values do come into genuine conflict, if we are committed to taking liberalism and coexistence seriously—and I think we should be—then what we need to do is address such conflicts in accordance with principles that no one similarly committed could reasonably reject.

In order to accomplish this, it is essential to identify and weigh relevant interests, which is not something that can be done in the abstract. "In considering whether a

principle could reasonably be rejected" we must "consider the weightiness of the burdens it involves, for those on whom they fall, and the importance of the benefit it offers, for those who enjoy them."[20] So it is not possible to identify principles for resolving values conflicts without conducting an "informal comparison of losses,"[21] which is not an abstract inquiry. Furthermore, since a "central feature of contractualism" is that the "justifiability of a moral principle depends only on various *individuals'* reasons for objecting to that principle and alternatives to it,"[22] the role played by community interests or values is *not* that of a personified collective. Children clearly have various interests in e.g. nutrition, education, loving care and guidance, membership in a community, and so forth; equally clearly, parents have various interests in their children's health, safety, moral education, community membership, and so on. But when we speak of a "community interest" in protecting or enculturating children, what is really being discussed is the individual interest every member of the community has in continuing to be a member of that community—as Scanlon puts it, in the "continuation of our common life."[23]

It is important, in the process, to not conflate these various interests—by failing to adequately distinguish children's interests from community interests, for example, or treating parental interests as purely derivative from those of their children. The result of such conflations is mistaken assignment of losses, for example in arguments that children

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[20] Scanlon, *What We Owe to Each Other,* 208.

[21] Scanlon, "Contractualism and Utilitarianism," 128.

[22] Scanlon, *What We Owe to Each Other*, 229.

[23] Ibid., 76.

are being harmed by a policy that is actually burdening community interests. The case of *Wisconsin v. Yoder*, considered in Chapter 1, furnished a compelling example of this, not in the Court's opinion but in the argument offered by the losing party. In that case, the State of Wisconsin argued not only that it had various interests in advancing childhood education, but that removing children from the public school environment would foster ignorance "from which the child must be protected by the State."[24] This argument is glossed by Joel Feinberg as Wisconsin attempting to mediate a conflict between parental supervisory interests and children's education interests.[25] But *Yoder* wasn't, ultimately, a case about education at all; it was a case about control over community participation (and, by extension, quality of community membership). No one disputed that the Amish petitioners were raising their children into productive adults who exercised admirable citizenship. What was disputed was *who should decide* whether it was more important for Amish children to spend their last few years of childhood preparing to *leave* or *remain in* the community of their birth: the state, or their parents. The *children's* interest in community membership could arguably be satisfied either way, insofar as each approach offered the advantage of better-preparing children to participate in *some* community (rather than another), so casting their parents' supervision as a burden but the state's supervision as a protection was simply prejudicial rhetoric from Wisconsin.

For an upbringing maximalist whose ideas about what constitutes a child's "best" life are heavily informed by their own enculturation into a majority view, it will be especially tempting to conflate the interests of children and the interests of community. If

[24] 406 U.S. 205, 222.

[25] See Joel Feinberg, "The Child's Right to an Open Future," 138.

it is in *my* interest that other people's children come to share my values, and it also seems to me that the best possible life for others would require them to come to share my values, then the fact that it would burden some parent's interest if their child should come to share my values looks like two wins and a loss. I might attempt to justify my interference in their parenting by appeal not only to my own interests, but to the imputed interests of their child. Of course I could be mistaken about the interests people actually have, but that is its own separate problem; even if I am *right* about all the relevant interests, this is *not the appropriate way to weigh interests.* The question is not whether some individual, or several individuals, have very weighty reasons to prefer a certain state of affairs. The question is whether anyone has sufficient reason, on balance, to *reject* principles for behavior that permit the relevant activity.

So, to select what seems like an obvious example, communities are quite justified in preventing parents from training their children to engage in terroristic attacks. It is certainly the case that being a terrorist is not the best possible life a child could live; moreover, it is certainly the case that a child could reasonably reject any rule permitting her parents from using her as a terrorist. But when it comes to community intervention in parenting, parents who behave wrongly are not appropriately subject to interference in their parenting practices by that fact alone. For communities to appropriately interfere with parenting, that interference must be in accordance with a rule that no one could reasonably reject. Who could reasonably reject a principle allowing government actors to remove children from the care of parents who train them to be terrorists? Such a principle surely burdens the interest parents have in raising their own children, and perhaps in whatever ideological interests they have driving their commitment to terrorism, but an

alternative principle forbidding government actors from removing children from such an upbringing burdens the interest that the children and their possible victims have in living their lives instead of being perpetrators or victims of terrorism. This proposed principle for removing children from the care of parents who train them to be terrorists is underdeveloped—for example, relevant public policy would need to further account for what would happen to those children after they were removed from their parents' care—but under all but the strangest of political circumstances I don't think it is a principle anyone could reasonably reject.[26]

Of course there are many ways to burden community interests without physically harming anyone. I have already mentioned one that seems especially worth examination: a community interest in continuation of the common life enjoyed by its members is burdened when children are not enculturated into that community. In pluralistic communities accommodating a variety of overlapping values commitments—that is, in our oft-maligned Western liberal democratic post-Enlightenment societies—this strikes

[26] It is difficult to know, sometimes, how specific it is necessary to be in identifying contractualist principles and related empirical assumptions, since empirical assumption space is vast, perhaps infinite. This is a feature rather than a shortcoming of contractualism, I think, as it is the result of a moral theory that seeks to account for things as they actually are, rather than as we might ideally prefer them to be. I have attempted to be reasonable in the assumptions I have made about the circumstances in which parents might decide to train their children as terrorists. But in case I have underspecified this particular principle, I observe that parents living under the oppressive rule of a genocidal government might well be in a position to reject a principle allowing government actors to remove children from their care, even if those parents were training their children to be terrorists. If the next step after removing such children from the care of their parents would be for the government to execute those children, or subject them to some kind of torture, it seems clear that parents (as well as children) would be in a position to reject a principle allowing their children to be taken by government actors. I do not think that very many people in the world are actually in this position, but it must be admitted that some probably are.

me as *the* burden that primarily drives public policy discourse on children and childhood, lurking in the background of a number of different debates. Only through the enculturation of children can we perpetuate our language, social norms, and political and economic endeavors. In Western liberal democratic post-Enlightenment societies, such endeavors tend to include the funding of social programs that attend to the destitute, elderly, and infirm, which is one reason that nations with negative birthrates so often find themselves looking for ways to effectively incentivize explicitly reproductive activity[27]—without which economies and the social programs they support threaten to collapse. But the perpetuation of unified linguistic, social, and political values at a national scale exists

[27] In fact there is nothing particularly new about governments prodding citizens for more babies, a practice that surely pre-dates Western liberal democratic post-Enlightenment societies and which I would not be at all surprised to learn has its origins in the first pre-historic utterance meaning, approximately, "I want some grandchildren!" But in countries with ubiquitous, affordable, effective birth control, low infant mortality, high housing and childcare costs, demanding careers available to both sexes, declining religiosity, increasing average age of marriage, and ever-growing legal constraint on granting special recognition or benefits to people for reasons connected with their sex or sexuality, governments have been forced to get creative in their prodding. Singapore, for example, answered a 0.78 birth rate by partnering with a popular brand of breath mints to promote a night of patriotic sexual activity for "financially secure adults in stable, committed long-term relationships." Rachel Nuwer, "Singapore's 'National Night' Encourages Citizens to Make Babies," *Smithsonian* (8 Aug. 8 2012), https://www.smithsonianmag.com/smart-news/singapores-national-night-encourages-citizens-to-make-babies-15402105/. The Japanese government went so far as to open its own speed-dating services. Chris Weller, "The Japanese Government is Setting Up Speed-Dating Events to Help With Its 'Demographic Time Bomb,'" *Business Insider* (5 Oct. 2016), https://www.businessinsider.com/japanese-government-dating-services-2016-10. Other incentives, like child tax credits or parental leave-of-absence legislation, are relatively ubiquitous across Europe and the North America. Even China, which for decades enforced a "one child" policy on most of its citizens, has lately relaxed that policy somewhat and turned toward (mostly, unsuccessfully) encouraging Han Chinese women (but not women of other ethnicities) to marry and have children. Leta Hong Fincher, "China Dropped its One-Child Policy. So Why Aren't Chinese Women Having More Babies?," *New York Times* (20 Feb. 2018), https://www.nytimes.com/2018/02/20/opinion/china-women-birthrate-rights.html.

in tension with values pluralism.[28] This tension, and the burdens it can impose, is easy to overlook from the perspective of someone already enculturated into a majority view, however, as the extent to which anyone even *notices* that the common life they value depends on the creation and enculturation of children depends on their *noticing* that they have some reason to be concerned about the future of their community.

3. The Enculturation of Muslim Migrant Children in Denmark

To offer an illustrative example: the country of Denmark recently made international headlines when it announced that children living in neighborhoods designated "ghettos" would be required to attend "mandatory instruction in 'Danish values,' including the traditions of Christmas and Easter, and Danish language" for 25 waking hours per week, beginning as one-year-olds.[29] Failure to enroll results in a stoppage of welfare payments to a child's family—and the law primarily impacts Muslim immigrants from the Middle East, North Africa, and Asia. For a country with almost six million inhabitants, more than 8 in 10 of whom are of Danish ancestry, to worry that half a million non-Western immigrants and their descendants pose a threat to its cultural future may strike the inhabitants of more diverse nations as faintly amusing.[30] Yet despite

[28] Likely the perpetuation of unified economic endeavors also exists in tension with values pluralism, but this seems like a sufficiently complex matter that I will set it aside.

[29] Ellen Barry & Martin Selsoe Sorenson, "In Denmark, Harsh New Laws for Immigrant 'Ghettos,'" *New York Times* (1 Jul. 2018), https://www.nytimes.com/2018/07/01/world/europe/denmark-immigrant-ghettos.html.

[30] About 12% of Denmark's population consists of recent immigrants and their children (including Western immigrants), while in the United States today at least 25% of inhabitants are first- or second-generation. See "First- and Second-Generation Share of the Population to Reach Record High in 2065," Pew Research Center (23 Sep. 2015), http://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-

Denmark's official "do it for Mom" ad campaign resulting in a slight increase in the indigenous fertility rate, it remains firmly below replacement levels,[31] while the fertility rate of non-Western immigrants is comparatively high. This is not the kind of trend that leads to encouraging demographic projections for anyone who values Danish culture, and appears to be the primary motivation of the new preschool program. Something arguably comparable might be occurring in places like the United States, but in a "nation of immigrants" with one of the world's largest populations and a long history of multiculturalism, it seems unlikely that Americans have much to be concerned about. English is a language with hundreds of millions of native speakers and hundreds of millions of secondary speakers. American culture, such as it is, has had a profound impact on culture, commerce, and governance around the world. There are a variety of ways in which certain classes of American might have their "common life" threatened, as organized religions shrink, rural economies tank, manufacturing jobs move overseas, and so forth. But at the level of national identity, cultural heritage, and linguistic community, whether or not it is strictly *wise* to do so, Americans are in a comparatively good position to shrug at immigration as it may relate to the future of our common life. Danes, by contrast, entertain a more reasonable fear for the future of their language and culture, because their community is substantially smaller, more isolated, and less globally imitated.

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to-u-s-driving-population-growth-and-change-through-2065/ph_2015-09-28_immigration-through-2065-11/.

[31] See Alexandra Sims, "Denmark's Bizarre Series of Sex Campaigns Lead to Baby Boom," *Independent* (2 Jun. 2016), https://www.independent.co.uk/news/world/europe/denmark-s-bizarre-series-of-sex-campaigns-lead-to-baby-boom-a7062466.html.

Denmark's answer—mandatory preschool programs aimed in part at the Danish enculturation of the young children least-likely to receive such enculturation at home—raises a number of questions, but the one that interests me most concerns the burden Denmark's lawmakers appear to perceive Muslim immigrants to be putting on the continuation of their community's "common life" by raising their children without input or guidance from the state. There are a variety of other reasons a nation might have to implement such a program, but remember that the relevant question is not "are there good reasons to implement this program." The question is, does a principle allowing Denmark to make welfare payments conditional on infant and toddler participation in a program of education aimed at enculturating children into the common life of the cultural majority violate a rule that no one could reasonably reject?

To answer that question, we must identify the reasons people have for objecting to that principle and alternatives to it. If I am the Muslim parent of a child who I value, in part, as someone I created and am training to participate in the common life of Islam, principles that undermine my ability to enculturate my child burden my important interests. Even if I am *not* a parent, if I am a member of the Muslim community in Denmark, I value the children of other Muslims as future peers and participants in the common life we enjoy, so I would still have some reason to reject a principle allowing government to undermine the likelihood that such children will eventually be members of my cultural community. But if I were a native Dane, I would value the children of Muslims in my geographic community for much the same reasons, albeit with different content: I might value the children of immigrants as future peers and participants in the common life of all Danes, or all Europeans, or all Westerners. I would value their

acquisition of my language, and their participation in my cultural traditions. An alternative principle, one making the Danish enculturation of Muslim children merely optional (or even forbidden), may threaten the continuation of the common life I enjoy with my fellow-citizens, at some future point where I found myself surrounded by people whose values are substantially divergent from my own. This will depend in part on how compatible Danish culture is with the common life of Muslim migrants, and my hypothetical Danish self might be concerned as a result of bad empirical assumptions; for example, I might have been misled by political actors, if it turns out that the immigrant population of Denmark can and will assimilate *without* government-sponsored childhood intervention. But considering other mass migrations through history, it at least does not seem obvious that a language or culture with fewer than six million native subscribers is immune from relatively rapid extinction.[32]

Part of the difficulty of this analysis is that the burdens associated with the principles under consideration are substantially speculative. How much of a burden does 25 hours per week of state-funded preschool really place on the parental enculturation of a child? Conversely, at what point can it really be claimed that one's linguistic or cultural community is so small that unassimilated cultural minorities put a meaningful burden on

[32] One stark example of such extinction is the depopulation of North and South America wrought by the Columbian introduction of European diseases. Scholars differ on the ultimate toll, but there appears to be agreement that anywhere from millions to tens of millions of native Americans died, both transforming the culture of those who remained and leaving them more vulnerable to eventual European conquest. Lesser examples abound, though the difference between cultural extinction and cultural evolution—or "language" and "dialect"—complicates the identification of clear cases. For example, official Chinese treatment of Cantonese as a "dialect," and therefore not a language to be taught in schools, may be driving Cantonese toward extinction. See Verna Yu, "Can Cantonese Survive?," *America: The Jesuit Review* (5 Jun. 2018), https://www.americamagazine.org/politics-society/2018/06/05/can-cantonese-survive.

the continuation of the common life? That is—there is some sense in which "the bigger, the better" always applies to the interest we have in the communities to which we belong. My opportunities for employment, education, romance, and so forth are likely greater in a community of a billion than in a community of a million. But what we might allegorize as the "marginal value" of increased community size is surely logarithmic. Assuming similar *distributions* of opportunity across "large" and "really large" communities, a community with a hundred thousand potential employment opportunities is no worse for me in this regard than a community with a million such opportunities, because the amount of time I can spend *looking* for suitable employment puts a cap on the number of opportunities it is even possible for me to give meaningful consideration. The persistence of cultures and languages found on various Pacific islands or within European microstates would appear to suggest that a community of ten or twenty thousand is basically adequate to support a "common life" for centuries on end—provided its participants continue to bear and raise children within the community, and influences functioning to sever community ties never grow too severe. The burden of having one's culture and language vanish is surely tremendous for the remnants who find that the common life they once enjoyed is simply no longer feasible, for want of co-participants. But it seems vanishingly unlikely that *any* of the approximately five million native Danes, *or* the hundreds of thousands of Muslim immigrants in Denmark, is in any plausible danger of actually becoming such remnants, either by the implementation or absence of half-day cultural preschool.

Perhaps I am wrong about this; perhaps the slow extinction of indigenous Danes has already begun. But suppose for now that I am right, and that no one in Denmark is

likely to be burdened by the experience of losing their community to the ravages of government action or inaction. What about the burdens imposed on parents and children by the Danish preschool program? A principle allowing the government to mandate Danish enculturation for the children of Muslim immigrants might, if the schooling works as apparently intended, impose a burden on the children's acquisition of common values from their parents, depriving them of some measure of enjoyment of the common life with one another—so both parents and children are burdened, though the seriousness of the burden is unclear. An alternative principle forbidding such enculturation, by contrast, might also burden parents and children; presumably some people *want* to assimilate, and the enculturation programs offered by the Danish government may very well convey substantial benefits in exchange for eroding children's other community ties. So it may be helpful to simply imagine the kinds of conversations a Muslim immigrant might have about the program with, say, a Danish social worker or Member of Parliament, and the kinds of justifications they might offer to one another under various principles.

What justification might be offered in support of a principle allowing mandatory Danish enculturation of the children of Muslim immigrants, that would not also apply to a principle making enculturation opportunities optionally available? I expect justification of this nature would be comparable to any justification of compulsory schooling generally: "your child has important interests in learning the dominant language of their geographical community, and to participate in its dominant culture, and these are important interests with which parents cannot be allowed to interfere." But I would expect a Muslim parent to answer, "my child also has important interests in learning the

language and culture of her parents and her peers, and I have reason to believe that mandatory preschool for such young children unreasonably intrudes on those interests. Furthermore, I have an important interest in having my child come to share my values. Even if your policy arguably benefits my child in ways that can justify the burden it imposes on *her*, the burden of your education policy is then heaviest on *me*. I can reasonably reject a principle allowing its implementation."

Such a response might arguably reflect *bad parenting*, insofar as one way to value one's children might be to take oneself to have reason to bear the burdens of principles that only or primarily benefit one's offspring. I am certainly sympathetic to the idea that some amount of self-sacrifice is an important feature of quality parenting. But that is a question for the moral domain of *parenting*, not the moral domain of what we owe to each other. Within the domain of what we owe to each other, parents are in a special position to reject principles that permit government enculturation of their children, because they are the primary bearers of the caregiving burdens imposed by biological and cultural reproduction. Having borne the burdens of an undertaking is a reason to reject principles that allow us to be deprived of the benefits of that undertaking, and one standard benefit of bearing the burdens imposed by biological and cultural reproduction is that the number of people with whom you can enjoy a common life is increased. Mothers in particular bear a substantial biological burden in the creation of new lives for inclusion in their family and community. Each surely has her own reasons for undertaking pregnancy, but I cannot imagine the goal of enlarging and perpetuating *someone else's* community is a common one. Even parents who place children with adoptive families tend to exhibit, when feasible, a preference for close ethnic, racial, and

religious matches,[33] suggesting that even when parents have decisive reason to *not* pursue a common *family* life with their children, they still regard themselves as having some reason to prefer their child be raised with as common a *community* as possible. Things causal parents might see as counting in favor of exercising such preferences in adoption placements include a responsibility to "give back" to their community, a spiritual obligation to see to the child's religious education as best they can, or even (in cases of ethnic and racial matches) a hope that the child will enjoy a greater sense of inclusion and identity by growing up around people who physically resemble her. Those parents who do undertake the burden of actually *raising* their own children have yet further reason to reject principles mandating what amounts to the recruitment of those children into other communities—communities that in some cases do not even have members willing to assume the burden of perpetuating their own common life through biological and cultural reproduction.[34]

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[33] This is especially interesting in light of the difficulties it can pose for members of minority communities. After experiencing a succession of heartbreaking refusals to place a child with him and his wife, based on their mixed-faith household, one commentator wrote: "Our hearts sank. Again, it was a birth parent request. It all seemed a bit ridiculous. We went back to the drawing board. Would we only be allowed to adopt a half-Sikh, half-Hindu baby whose birth parents hailed from particular states in India? We were losing all hope." Ayan Panja, "Adoption: Giving Due Weight to Birth Parents' Religious Preferences," *The Guardian* (19 Nov. 2010), https://www.theguardian.com/commentisfree/belief/2010/nov/19/adoption-children-birth-parents-religion.

[34] In English literature, these ideas are perhaps most eloquently expressed in the Dr. Seuss classic, *Horton Hatches the Egg.* For those unfamiliar with the story, Mayzie (a lazy bird) convinces Horton (an elephant) to do the tedious work of incubating her egg while she takes some time off. She promises to not be gone long—but it soon becomes apparent that she has no particular intention of ever returning. As rhymed-and-metered fate would have it, a chance reunion of egg, bird, and elephant occurs just as the egg begins to hatch, at which point Mayzie accuses Horton of stealing it and demands its return. But what emerges from the egg is more elephant than bird, wings notwithstanding,

It is interesting to imagine alternative scenarios in which indigenous Danes have some reason, aside from their own lifestyle choices, for low native birthrates. Suppose indigenous Danes shared a genetic susceptibility to a plague that swept their country, sterilizing anyone who survived infection. Would this make a case for mandatory enculturation of migrant children? Certainly it would strengthen the *interest* that indigenous Danes had in seeing to the enculturation of children in their broader community, but would it clearly be weightier than the interest that the parents of those children may have in *preventing* their children from abandoning the community of their birth to fill out the ranks of someone else's community? I do not think that it possibly could. The reason I do not think so is that the kinds of reasons I would accept for overriding parental care and authority do not include the pending extinction of a stranger's culture. Indeed I do not know anyone who would accept such a reason, and with good reason! To speak of, in essence, *redistributing children* is horrifying, precisely because of where children come from—how children are made.[35] The contractualist commitment to coexistence is *not a commitment between cultures*. It is a commitment between individuals. And if my community, language, or culture is threatened with extinction, there may be a variety of obligations owed to me by those who wish to behave in accordance with principles neither of us could reasonably reject, but something I

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and one of America's most venerated poets concludes, "And it should be, it *should* be, it SHOULD be like that!"

[35] In fact the idea of redistributing children is sufficiently horrifying that it is sometimes treated as the absurdity in reductio arguments against certain egalitarian positions. A good discussion of such arguments can be found in Anca Gheaus' "The Right to Parent One's Biological Baby."

cannot reasonably demand is to raise other people's children as my own. They are not *my* children to raise.

Of course this conclusion is easiest to reach given premises that are unrealistically clear; reality will almost always be more complicated than whatever reproductive dystopia we care to concoct. The Danes themselves are not *infertile*, but simply choosing less gravid lifestyles than their immigrant neighbors. Could they reasonably reject a principle forbidding the conditioning of welfare payments on preschool experiences intended to enculturate children into the common life of cultural Danes? One concern they might have is that the wealth of their nation not be used to undermine their own value commitments; welfare benefits are made possible by the productivity of Denmark's citizens, and if migrants do not assimilate in ways that make them economically productive, too, everyone's standard of living might suffer. The social-democratic values that dominate Denmark's political culture might also be at stake if the rising generation acquires its values more from the communities their parents departed than the community where they arrived. If the preschool program removed children from their homes over the objection of their parents, this might resemble a forced redistribution of children sufficiently to deprive the Danes of their reasonable objection to a limiting principle. But it is not at all obvious that Muslim migrants are unconditionally owed such welfare payments. Are the concerns of indigenous Danes—that if they do not condition welfare payments on preschool attendance, their common life will be burdened—empirically justified? I do not know, and I know of no way to conclusively ascertain the facts of the matter. The Danish government's concerns do seem *plausible*, but that may be the most it is possible to say about them.

Can the children of Muslim migrants reasonably reject an alternative principle, permitting their welfare payments to be made conditional on preschool experiences intended to enculturate children into the common life of cultural Danes? While the Danish preschool program admittedly does not *redistribute* immigrant children, it does redistribute a fairly substantial amount of their time, placing some burden on the interest they have in spending that time with their parents instead. But it also seems to be at least potentially in such children's interests to learn Danish or otherwise come to better understand the people in their geographic community. It further seems true that children can be raised with at least some exposure to one, few, or many cultures without ever *guaranteeing* what they will choose for themselves, once they are able—as discussed substantially in Chapters 4 and 5. If preschool enculturation was likely to deprive children of possible participation in the common life enjoyed by their parents' religious community, that would be a reason to reject a principle requiring them to attend such schooling. But it is not certain that preschool enculturation will have such an effect; secular Western education does appear somewhat correlated with eventual irreligion, but there are still many religious people, including Muslims, succeeding at every level of Western academia. Furthermore, the principle does not require children to attend preschool; it only makes certain welfare funds conditional on such attendance. Any children whose parents opt to forgo both preschool attendance and welfare payments might find their interests in e.g. food or shelter burdened by the policy, but would this give them a complaint against the *policy*, or a complaint against their parents' decision in connection with the policy? My instinct is to suggest that children may have reason to reject both a principle permitting their parents to keep them home from preschool when

such a law is in force, and a principle allowing the government to leverage welfare payments in this way. Threatening children's interests in food, shelter, and whatever else welfare payments provide, in order to motivate parents to cooperate with government enculturation aims, strikes me as the kind of behavior it would be very difficult to justify to others. But whether it constitutes a burden on children's interests that is greater than the burden placed on Danish community interests by alternative principles will depend on whether the Danish government's cultural concerns are actually warranted, which remains an unanswered empirical question.

Can consideration of the burdens placed on *parents* by conditioning welfare payments on their children's preschool attendance get us any closer to a clear answer? This will turn in part on whether welfare payments are the sort of thing parents are owed in the first place—requiring an expanded inquiry into the principles governing the redistribution of income and wealth. I will undertake no such inquiry here, but assume for the sake of argument that welfare payments are made to Muslim migrants in an effort to address an objectionable insufficiency, and place minimal burdens on the interests of others, such that the payments are required by a rule no one could reasonably reject. If that is the case, then denying such payments to migrants in response to how they choose to raise their children would appear to violate the relevant principle. On the other hand, if welfare payments are permissible under a rule no one could reasonably reject, but not *required* by such a rule, then it is less obvious that requiring parents to choose between welfare payments and preschool, or no payments and no preschool, burdens their interests sufficiently that a decisive objection can be raised.

In the final analysis, then, the justifiability of Denmark's preschool policy remains something of an open question: there is simply too much we don't know, perhaps too much that cannot be known. But this puts the Danish community in much the same position as parents, responding to reasons that are apparent and accessible to them *now*, even though they do not and/or cannot have complete information, and even though various individuals may later have reason to be quite sorry about the selected response. This leads me to a couple of loosely-related observations concerning parenting and policy-making both.

One is that I am tempted to identify the burdens placed on the present interests of immigrant parents in directing the upbringing of their children as weightier than speculative burdens on community or children's interests, simply because they are not speculative. In contractualist terms, a reason for rejection based on speculation seems less weighty than a reason based on established fact, even if the relevant ills on either side are equal. Preschool attendance may or may not have the feared or desired enculturation impact, but putting financial pressure on adults to raise their children in certain ways immediately places a totally non-speculative burden on their interests. So my inclination is to conclude that the Danish preschool policy is impermissible, whatever interests it may or may not *eventually* serve. But this would be a mistake in at least two ways. First, just as parents have present interests in directing their children's upbringing based in part on the ways they value their children, community members have a present interest in the enculturation of children not their own, based in part on the ways they value children generally. While many relevant facts might be substantially speculative, the interest itself is not speculative at all. Second, in conducting an informal comparison of losses, I don't

think it would be permissible (or wise) to disregard possibilities simply because they are not certainties. The challenge is knowing when a possibility is sufficiently great (or sufficiently costly) to treat it as a reason. As noted in the introduction to this chapter, there always seems to be more information available for consideration than it is possible to consider, but that doesn't justify us in ignoring such information as it *is* possible for us to consider, and plausible eventualities seem like exactly that kind of information. To develop this observation further would require more discussion of epistemology than I am prepared to undertake here, but the point is that the matter cannot be settled by simply discarding speculative concerns, even though it would also be a mistake to overlook their speculative nature.

Another observation is that policymakers who wish to minimize the kind of extended cultural and political conflict that has attended the Danish preschool policy may have good reason to emphasize *incentives* over *punishments*. I do not think government actors are bound by any obvious contractualist obligations in this regard. But consider the permissibility of a policy *offering* cultural preschool to the children of Muslim migrants. Doubtless some parents would decline to enroll their children in such a program, but how many? If most parents would enroll their children willingly, that would be good evidence that the government was not especially justified in making welfare payments conditional on program participation. If most parents declined to enroll their children, that fact, too, would be helpful empirical information to have in deciding how to proceed. In pluralistic societies, cultural conflicts will probably not always be avoidable, but one way communities can "interfere" with parent-child relationships in minimally objectionable

ways is simply to *give parents attractive options*. A careful structuring of incentives could go a long way toward eliminating any need for disincentives.

4. Conclusion

This final point returns us to the beginning of Chapter 1—to the observable inclination toward certain kinds of maximalism in legal and philosophical treatments of upbringing. Much of this project has been concerned with explaining how maximalism is mistaken, but it is not, I think, *entirely* mistaken. If policymakers can minimize conflict with parental interests by furnishing options rather than burdening parents, might the same be true for parents contemplating the options of their children? I think so. What Joel Feinberg calls a child's right to an "open future" is not a right anyone actually has, and yet parents may be well-advised, in light of the extent to which they are inevitably ignorant about future developments in their child's life, to focus on acting in ways that seem likely to give their children more and better options. This is not a contractualist obligation, but it is a way of valuing children that is sensitive to contractualist obligations—it is a tactic for influencing others while avoiding unjustifiable behavior by making certain options more attractive rather than imposing burdens on other people's interests.

In this chapter, I have considered a variety of justifications a community might have for interfering with parent-child relationships. The first community to which all children belong is their family, and all other communities—religious, vocational, geographical—are perpetuated, if they are perpetuated, in part by the creation and upbringing of children, often but by no means always within the community itself. This makes children valuable, not just to their parents (though also to their parents), but to

everyone with an interest in the preservation and perpetuation of their own "common life." Sometimes this will lead to values conflicts, but one of the great benefits of community is that the challenges and conflicts that arise in our lives are more easily overcome when we can draw from the collected wisdom and resources of like-minded others. Raising children is just such a challenge, and because children are valuable, communities with children are often disposed to be especially supportive of parents. That is: communities have reason to participate in parent-child relationships in ways that parents often have reason to *welcome*, especially when there is substantial values agreement across the whole community.

This may be where concerns like those motivating the Danish preschool initiative really originate: the growth of sub-communities within a region or nation that not only subscribe to alien values, but are in many cases specifically critical of dominant cultural values, really *complicates* the pursuit of community-scale enculturation efforts. Indeed, this may be *the* challenge of 21st century liberalism: how to accommodate, not merely a "pluralistic" community incorporating several dozen flavors of Judeo-Christianity and a smattering of racial and ethnic minorities, but a proliferation of liberal and illiberal values and identities engaging a "common life" characterized primarily by economic exchange and the formation of political alliances—often aimed, in part, at homogenizing the upbringing of children to ensure the perpetuation of their *own* culture. But the extent to which this may be true, and what (if anything) might be done about it, are inquiries beyond the scope of this project. Suffice it for now to conclude that children are valuable to communities, and communities are valuable to everyone—and when those values come into conflict, the place to look for mediation is the moral domain of what we owe to

each other. When what we owe to each other is unclear, given the unavailability or inaccessibility of relevant empirical information, it may be that the best option available is to do what we can to make our preferred solution attractive to others.

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BIOGRAPHICAL SKETCH

Kenneth Ralph Pike was born in Mission Viejo, California, on 13 July 1980, the second child of a civil engineer and a homemaker. He graduated from Deer Valley High School in Glendale, Arizona, in 1998, shortly after the birth of his eighth sibling. Kenneth was married to Aprilynne Rubert in November of 2001; their first child was born in 2003. Just before the birth of their second child, Kenneth completed his undergraduate education, majoring in philosophy and minoring in psychology at Brigham Young University in Provo, Utah. Their third child was born while Kenneth was enrolled at the J. Reuben Clark Law School in Provo, Utah, which awarded Kenneth's J.D. in April of 2009. The following month his wife's debut children's novel became a #1 *New York Times* best-seller, so after Kenneth passed the Arizona bar exam and Aprilynne gave birth to their fourth child, Kenneth decided to pursue graduate work at Arizona State University in Tempe, Arizona. During this time he authored his own novel, aimed at communicating philosophical insights on moral maturity to an audience of children, and published it with Deseret Book in 2012. He received his M.A. in philosophy in May of 2013 and returned to Arizona State University to pursue a Ph.D. beginning in 2015. During the course of his doctoral studies, Kenneth served as a research associate for the Arizona State University Institute for Humanities Research, taught philosophy as faculty adjunct for the Maricopa County Community College District and for his undergraduate alma mater, Brigham Young University, and participated as a member of the American Philosophical Association's Committee for Philosophy in Two-Year Colleges.